राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

सोमवार, 03 दिसम्बर, 2018 / 12 मार्गशीर्ष, 1940

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla, the 7th September, 2018

No. Shram (A) 6-4/2018 (Awards).—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act,1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court

Shimla on the website of the Department of Labour & Employment Government of Himachal Pradesh :—

Sr.No	Ref./Application	Title	Section
01.	Ref. 28/2016	Sh. Rajeev Kumar *V/s* The M.D.M/S Super Multicolor Prints Ltd. Baddi, Distt Solan, H.P.	10
02.	Ref.111/2017	Sh. Om Prakash *V/s* The Divisional Forest Officer, Forest Division Shimla & Anr.	10
03.	Ref.100/2017	Sh. Nek Chand *V/s* The Divisional Forest Officer, Forest Division Shimla & Anr.	10
04.	Ref.101/2017	Sh. Ramesh Kumar *V/s* The Divisional Forest Officer, Forest Division Shimla & Anr.	10
05.	Ref.102/2017	Sh. Nek Ram *V/s* The Divisional Forest Officer, Forest Division Shimla & Anr.	10
06.	Ref.113/2017	Sh. Bhupinder Singh V/s The Divisional Forest Officer, Forest Division Shimla & Anr.	10
07.	Ref.106/2017	Sh. Deep Ram *V/s* The Divisional Forest Officer, Forest Division Shimla & Anr.	10
08.	Ref.105/2017	Sh. Gangan Thakur *V/s* The Divisional Forest Officer, Forest Division Shimla & Anr.	10
09.	Ref.104/2017	Sh. Surender Singh *V/s* The Divisional Forest Officer, Forest Division Shimla & Anr.	10
10.	Ref.109/2017	Sh. Besar Dass *V/s* The Divisional Forest Officer, Forest Division Shimla & Anr.	10
11.	Ref.110/2017	Sh. Ram Singh *V/s* The Divisional Forest Officer, Forest Division Shimla & Anr.	10
12.	Ref.103/2017	Sh. Yog Raj V/s The Divisional Forest Officer, Forest Division Shimla & Anr.	10
13.	Ref.107/2016	Sh. Shyama Nand *V/s* The Executive Engineer, Division Rohru HPSEB, Shimla.	10
14.	Ref.64/2016	Sh. Umesh Kumar *V/s* The Executive Engineer, Division No-1, HPSEB, Charlie Villa, Shimla-2.	10
15.	Ref.128/2017	Sh. Vikas Thakur *V/s* M/S Autocop India(P)Ltd.	10
16.	Ref.168/17	Sh. Amit Kumar & Ors *V/s* M/s Case Cold Roll Farming Ltd.	10

17.	Ref.45/14	Sh.Shamsher Singh *V/s* M/sVenteshwara Hatcheries Pvt Ltd. Tehsil Nalagarh, Distt Solan, H.P.	10
18.	Ref.72/16	Sh. Roop Ram *V/s* Executive Engineer, I&PH, Division No.1 Kasumpti, Shimla, H.P.	10
19.	Ref.106/16	Sh. Shishi Ram *V/s* The Executive Engineer, Division Rohru, Tehsil Rohru, Distt Shimla, H.P.	10

By order,

NISHA SINGH, IAS,
Addl. Chief Secretary (Lab. & Emp.)

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Ref. No. : 28 of 2016
Instituted on : 26-3-2016
Decided on : 7-6-2018

Rajeev Kumar, r/o Set No. 15, Quarter No. 6/A, P.O Chittranjan, District Burdwan (West Bangal) presently residing at c/o Nirmal Singh, Village Bengla Beli, P.O Kharoni, Tehsil Nalagarh, District Solan, H.P. ..*Applicant.*

Vs

Managing Director, M/s Super Multicolor Prints Pvt. Ltd. (folding carton) r/o Village Kisanpura, Baddi-Nalagarh Road, District Solan, H.P. ..*Respondent.*

Claim petition on behalf of the petitioner.

For petitioner : Shri Dharmender Verma, Advocate vice Shri C.M Tanwar, Advocate.
For respondent : Already *ex-parte*.

AWARD

The following reference has been received from appropriate government by this court for adjudication :—

"Whether the termination of the services of Shri Rajiv Kumar, resident of c/o Nirmal Singh Village Bengla Beli, P.O Kharoni, Tehsil Nalagarh, District Solan, H.P. (present address) and Set no. 15, Quarter No. 6/A, P.O Chittranjan, District Burdwan (West Bangal)-713331 who was employed as senior operator and drawing salary of 40,000/- per month by the Managing Director, M/s Super Multicolor Prints Pvt. Ltd. (folding carton), Village Kishanpura, Baddi-Nalagarh Road, District Solan, H.P. *w.e.f.* 1.8.2014 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and amount of compensation the above aggrieved worker is entitled to from the above employer/management.?"

2. Briefly, the case of the petitioner is that initially he was appointed as senior operator by the respondent on 15.6.2012 and he continuously worked upto 1.8.2014 and thereafter his services were terminated without complying with the provisions of section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). It is further stated that the respondent indulged in unfair labour practice and had always vindictive attitude towards the petitioner and always tried to dispense his services without any cause and without giving any prior notice. It is also stated that the petitioner was getting salary of Rs. 40,000/- per month from the initial start and the respondent had not released the salary for the month of July 2014. It is stated that the petitioner had worked continuously and had completed 240 days in each calendar year and his juniors are still working in the respondent company. That the petitioner had submitted several representations to the respondent for his re-engagement but of no avail. Against this back-drop a prayer has been made that the respondent be directed to re-engage the petitioner and to pay all monitory benefits/compensation as per the provisions of the Industrial Disputes Act.

3. Before, I proceed further, it is important to mention here that the respondent was duly served but failed to appear before this Court, hence, *vide* order dated 4.4.2018, the respondent was proceeded against *ex-parte*.

4. I have heard the learned counsel for the petitioner and also gone through the evidence as well as record of the case carefully.

5. To prove his case, the petitioner stepped into the witness box as PW-1 to depose that he was engaged as senior operator by the respondent on 15.6.2012. He tendered in evidence the copy of offer letter Mark P-1 which was received and accepted by him on 25.5.2012. He further deposed that his monthly salary was Rs. 37,500/-. He also tendered in evidence the copy of appointment letter Mark P-2. He also stated that he had worked with the respondent upto July, 2014 and his services were terminated in the month of August 2014 without issuance of any notice and compensation and his salary for the month of July 2014 had also not been paid to him. He deposed that he was not paid increments and when he demanded the same his services were terminated.

6. I have closely scrutinized the entire record of the case and after the closure scrutiny thereof it has become clear that the petitioner was appointed as an operator on 15.6.2013 as per the appointment letter Mark P-2. The petitioner categorically deposed that his services were terminated in the month of August 2014. The aforesaid testimony of the petitioner has gone un-rebutted. Therefore, it has become clear that the petitioner had completed 240 days in the preceding 12 months prior to his termination. As per the statement of petitioner as PW-1, it is also clear that neither any notice as prescribed under section 25-F of the Act was served upon the petitioner nor he was paid any compensation in lieu thereof. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondent to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case the respondent has failed to comply with the provisions of section 25-F of the Act. **In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd.** *Vs.* **Mackinnon Employees Union**, the Hon'ble Apex Court has held as under:—

> **"34. ……The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25F clause (b) in the negative since no evidence has been produced by the respondent-Union to prove the same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25F clause (c), the appellant-Company has not been able to produce cogent evidence that**

notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law."

7. In the present case also as observed aforesaid, the respondent had failed to comply with the provisions of section 25-F of the Act before terminating the services of the petitioner. Hence, In view of the law laid down by the Hon'ble Supreme Court (*supra*) and my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f* 1.8.2014 by the respondent without complying with the provisions of section 25-F of the Act is illegal and unjustified.

8. The further case of the petitioner that his services have been terminated in contravention of the provisions of sections 25-G and 25-H of the Act as after his termination his juniors have been retained and new/fresh persons were engaged by the respondent. However, no evidence has been led by the petitioner to prove that the persons junior to him were retained or new/fresh persons were engaged by the respondent. No documentary evidence has been placed on record by the petitioner which could go to show that the respondent has retained the persons junior to him and engaged fresh hands. Hence, in the absence of any cogent and satisfactory evidence on record, the case of the petitioner does not fall under section 25-G and 25-H of the Act.

9. Therefore, in view of my foregoing discussion since I have held that the termination of the services of the petitioner without serving any notice as prescribed under section 25-F of the Act, hence, he is entitled for reinstatement in service.

10. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the AR for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited** *Vs.* **Shamim Mirza**, the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals** *Vs.* **Prabhakant Shukla** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

11. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another** *Vs*. **S.C Sharma** that:—

> "16……..When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim……."

In the present case, the petitioner has failed to discharge his burden by placing any concrete material on record that he was not gainfully employed after his termination. The petitioner has even failed to depose that he was not gainfully employed after his termination. Therefore, in view of the entire evidence on record, coupled with the rulings (*supra*), I have no hesitation in holding that the petitioner is not entitled to any back-wages.

RELIEF

As a sequel to my above discussion, the claim of the petitioner succeeds and is hereby allowed with the result, the respondent is directed to reinstate the petitioner in service forthwith with seniority and continuity. However, the petitioner is not entitled to any back-wages. The reference is answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 7th day of June, 2018.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Ref. no. 111 of 2017
Instituted on 10-7-2017
Decided on 20-6-2018

Om Prakash s/o Shri Nokh Ram, r/o Village Bag, P.O Reog, Tehsil Sunni, District Shimla, H.P. ..*Petitioner.*

Vs.

1. The Divisional Forest Officer, Forest Division, Shimla, Mist Chamber Shimla, District Shimla, H.P.

2. The Range Officer, Forest Range Sunni, Tehsil Sunni, District Shimla, H.P.
.. *Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ajay Shandil, Advocate
For respondents : Shri Mahinder Singh, ADA

AWARD

The following reference has been received from appropriate government by this court for adjudication:—

"Whether the termination of the services of Shri Om Prakash s/o Shri Nokh Ram, r/o Village Bag, P.O Reog, Tehsil Sunni, District Shimla (H.P.) w.e.f. 1.3.2016 by the Divisional Forest Officer, Forest Division Shimla H.P. allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back-wages, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. Briefly, the case of the petitioner is that initially he was engaged as daily rated beldar *w.e.f.* 1.3.2004 with the respondents and he was asked to work at Forest Range Sunni, Forest Division Shimla and since the date of his engagement, the petitioner had discharged his duties as assigned to him with full sincerity, honesty, devotion, missionary-zeal as well as to the entire satisfaction of his superiors and there has been no complaint against him. It is further stated that the petitioner had worked with the respondents till 29.2.2016 and thereafter his services were orally terminated by the respondents without giving any notice or assigning any reason and even the respondents are giving artificial/fictional breaks willfully in order to deprive his status of permanent workman. That the employer is in the habit of not issuing muster-roll and taking the work on bill basis and had not marked the presence on muster-roll and from the date of his engagement the petitioner had worked continuously and had completed 240 days in each calendar year and also preceding to the date of his oral and illegal termination but neither any notice under section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) was given to the petitioner nor he was paid compensation. It is also stated that the regular work is available in Sunni Range and even the respondents have retained number of juniors in service whereas the services of the petitioner were terminated in violation of the principles of *audi alteram partem* as no opportunity of being heard had been afforded to him. Against this back-drop it has been prayed that the petitioner be ordered to be re-engaged in service at the same place and post and vicinity in which he was working prior to his illegal termination and the respondents be directed not to give artificial or fictional breaks and also issue muster-roll to the petitioner. It has further been prayed that the petitioner be granted permanent status by counting daily wage service as per the policy of the Government issued from time to time by condoning the artificial or fictional breaks for the purpose of 240 days.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability and delay and latches. On merits, it has been asserted that the petitioner was initially engaged during the year 2005 to carry out the seasonal forestry works in Bhajji Range of Shimla Forest Division and he had completed 240 days in the year 2006 only and thereafter he used to come on work as per his suitability and except 2006, the petitioner never completed 240 days in any calendar year. That no artificial /fictional breaks were given to the petitioner by the respondents and he is still working in Bhajji Range on bill basis as per latest instructions of the Government/Department. It is further asserted that the petitioner had worked from 2005 to 2011 on muster-roll basis but he did not complete 240 days in any calendar year except the year 2006 and thereafter he was engaged on bill basis and since the services of the petitioner were never terminated by the respondents, hence, the question of giving notice under section 25 of the Act does not arise and as far as the engagement of his juniors is concerned, the persons namely Nek Chand, Om Prakash, Tej Ram were engaged on work in compliance to award passed by this Court, hence, no violation has been committed by the respondents department in any manner with regard to disengagement of petitioner. The respondents prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondents.

5. On the pleadings of the parties, the following issues were framed:—

(1) Whether the termination of the services of the petitioner by the respondents *w.e.f.* 1.3.2016 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified? ..*OPP.*

(2) If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? ..*OPP.*

(3) Whether the petition is not maintainable as alleged? ..*OPR.*

(4) Whether the petition is hit by delay and latches as alleged? ..*OPR.*

(5) Relief.

6. I have heard the learned counsel for the petitioner and Ld. ADA for respondents and also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1	:	No
Issue No. 2	:	Becomes redundant
Issue No. 3	:	No
Issue No. 4	:	Not pressed
Relief	:	Reference answered in favour of the respondents and against the petitioner per operative part of award.

REASONS FOR FINDINGS

Issues No. 1:

8. The case of the petitioner is that he had completed 240 days in each calendar year and his services had been terminated by the respondents illegally without complying with the provisions of section 25-F of the Act. He further contended that the respondents are giving artificial/fictional breaks willfully in order to deprive the status of permanent workman to petitioner. He also contended the juniors to the petitioner are still working with the respondents in violation of the provisions of sections 25-G & 25-H of the Act.

9. On the other hand, the learned ADA contended that the petitioner was engaged as seasonal forest worker and his services were never terminated by the respondents who is still working with the department on bill basis. He further contended that the petitioner had never completed 240 days in any calendar year except the year 2006 and his juniors have been engaged on the basis of award passed by this Court.

10. To prove his case, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as made in the claim petition. He also tendered in evidence the copy of seniority list Mark PX. In cross-examination, he denied that he had not completed 240 days for eight years continuously. He admitted that he is still working with the department. He denied that the department had never gave him artificial breaks. He further denied that he was never terminated by the department. He denied that no junior person was engaged. He admitted that that he is working on bill basis with the department after the year 2011.

11. PW-2 Shri Devi Singh, Deputy Ranger deposed that the name of the petitioner is reflected in the seniority list of daily wager of Bhajji Forest Range from the year 2005 till the year 2011. He further stated that as per the record, Sita Devi was engaged on 1.2.2009 in Bhajji Forest Range and the department does not maintain the record about the working days of the labourers on bill basis. In cross-examination, he admitted that at the time of engagement of Sita Devi the petitioner was also working with the department. He further admitted that no daily wager was engaged after the year 2009. He also admitted that the petitioner is still working with the

department on bill basis. He further admitted that as per the record, the petitioner had not completed 240 days in any calendar year except the year 2006.

12. On the other hand, the respondents have examined one Shri Ramesh Chand, Range Forest Officer Bhajji Range as RW-1 who tendered in evidence his affidavit Ex. RW- 1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the copy of mandays chart Ex. RW-1/B. In cross-examination, he stated that the petitioner was engaged as a daily rated beldar on 1.1.2005 and he worked till 1.3.2016. He volunteered that the petitioner worked on muster-roll basis till the year 2011 and thereafter he had worked on bill basis. He denied that the petitioner had worked continuously till 2016. He admitted that no compensation was paid to the petitioner. He denied that artificial breaks were given to the petitioner. He further denied that the juniors to the petitioner have been retained. He admitted that Tej Ram, Om Prakash and Nek Chand are still working with the department, however, they have been retained as per the award of the Court. He denied that they are juniors to the petitioner. He further denied that the seniority is maintained at the division level. He stated that Sita Devi was engaged on 1.2.2009 as a daily wager on compassionate ground.

13. I have closely scrutinized the entire record of the case and after the closure scrutiny thereof it has become clear that the petitioner is still working with the respondents on bill basis. It has also become clear that the petitioner had worked with the respondents on the basis of muster-roll *w.e.f.* 1/2005 and worked as such till the year 2011. The perusal of mandays chart Ex. PW-1/B goes to show that the petitioner had worked for 134 days in the year 2005, 251 days in the year 2006, 187 days in the year 2007, 168 days in the year 2008, 186 days in the year 2009, 229 days in the year 2010 and 88 days in the year 2011. Thus, it is clear from the mandays chart Ex. PW-1/B, that the petitioner had completed 256 days only in the year 2006 and he has failed to prove on record that he had worked for 240 days in preceding twelve months prior to his termination. In **2009 (120) FLR 1007 in case titled as Relip Nagarpalika** Vs. **Babuji Gabhaji Thakore and others** , the Hon'ble Supreme Court has held as under:—

> **"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."**

In **AIR 2006 S.C. 110 case titled as Surindernagar District Panchayat** *V/s* **Dayabhai Amar Singh,** the Hon'ble Supreme Court has held that:—

> **"In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster-roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."**

A bare perusal of the extract of the judgments re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. The perusal of mandays chart Ex. PW-1/B shows that the petitioner had completed 240 days only in the year 2006 and not in preceding twelve months from the date of his termination. No evidence to the contrary has been led by the petitioner to show that he had completed 240 days in twelve calendar months preceding

his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

14. The learned counsel for the petitioner next contended that the respondents had retained the juniors namely Nek Chand, Om Prakash, Tej Ram and Sita Devi who are still working and besides this even fresh persons have been engaged by the respondents as such the respondents had violated the provisions of section 25-G & 25-H of the Act. However, in his evidence by way of affidavit RW-1 categorically stated that Nek Chand, Om Prakash and Tej Ram were engaged on work in compliance to the award passed by the Labour Court and no violation has been committed by the respondents in any manner with regard to the disengagement of the petitioner. Further in cross-examination, he categorically denied the suggestion that Nek Chand, Om Prakash and Tej Ram were juniors to the petitioner. He further deposed in cross-examination that Sita Devi was engaged on compassionate grounds. No evidence to the contrary has been led by the petitioner in order to show that Nek Ram, Om Prakash and Tej Ram were not engaged on the orders of the Court and Sita Devi was not engaged on compassionate grounds. No benefit can be derived by the petitioner from the seniority list mark PX as the same has not been proved in accordance with law. No record has been summoned/produced by the petitioner in order to prove the aforesaid seniority list. In fact, no cogent and satisfactory evidence has been led by the petitioner which could go to show that the respondents have retained the persons junior to him as per their own orders and not upon the orders of the Court and had also engaged fresh hands. Hence, in the absence of any cogent and satisfactory evidence on record, the case of the petitioner does not fall under section 25-G and 25-H of the Act.

15. Thus, in view of my foregoing discussion, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 1.3.2016 by the respondents is not illegal and unjustified. Accordingly, issue no.1 is decided in favour of the respondents and against the petitioner.

Issue No. 2:

16. Since, the petitioner has failed to prove issue No.1 above, this issue becomes redundant.

Issue No. 3:

17. In support of this issue, no evidence has been led by the respondents which could go to show as to how the present petition is not maintainable especially when the petitioner has filed the present petition pursuant to the reference sent by the appropriate government to this Court for adjudication and I find nothing wrong with the present petition which is perfectly maintainable. Therefore, in the absence of any evidence on record, it cannot be said the petition is not maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Issue No. 4:

18. During the course of arguments, this issue was not pressed by the learned ADA for respondents, hence, the same is decided in favour of the petitioner and against the respondents.

Relief:

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner fails and is hereby dismissed with the result the reference is answered in favour of the

respondents and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 20th day of June, 2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla*

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Ref. No. 100 of 2017
Instituted on 1-7-2017
Decided on 20-6-2018

Nek Chand s/o Shri Bhagat Ram, r/o Village Matogri, Post Office Chaba, Tehsil Sunni, District Shimla, H.P. ..*Petitioner.*

Vs.

1. The Divisional Forest Officer, Forest Division, Shimla, Mist Chamber Shimla, District Shimla, HP.

2. The Range Officer, Forest Range Sunni, Tehsil Sunni, District Shimla, H.P.
..*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ajay Shandil, Advocate
For respondents : Shri Mahinder Singh, ADA

AWARD

The following reference has been received from appropriate government by this court for adjudication:—

"Whether the termination of the services of Shri Nek Chand s/o Shri Bhagat Ram, r/o Village Matogri, P.O Chaba, Tehsil Sunni, District Shimla (H.P.) *w.e.f.* 1.3.2016 by the Divisional Forest Officer, Forest Division Shimla H.P. allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back-wages, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. Briefly, the case of the petitioner is that initially he was engaged as daily rated beldar *w.e.f.* 1.1.2005 with the respondents and he was asked to work at Forest Range Sunni, Forest Division Shimla and since the date of his engagement, the petitioner had discharged his duties as assigned to him with full sincerity, honesty, devotion, missionary-zeal as well as to the entire satisfaction of his superiors and there has been no complaint against him. It is further stated that the petitioner had worked with the respondents till 29.2.2016 and thereafter his services were orally terminated by the respondents without giving any notice or assigning any reason and even the

respondents are giving artificial/fictional breaks willfully in order to deprive his status of permanent workman. That the employer is in the habit of not issuing muster-roll and taking the work on bill basis and had not marked the presence on muster-roll and from the date of his engagement the petitioner had worked continuously and had completed 240 days in each calendar year and also preceding to the date of his oral and illegal termination but neither any notice under section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) was given to the petitioner nor he was paid compensation. It is also stated that the regular work is available in Sunni Range and even the respondents have retained number of juniors in service whereas the services of the petitioner were terminated in violation of the principles of *audi* alteram partem as no opportunity of being heard had been afforded to him. Against this back-drop it has been prayed that the petitioner be ordered to be re-engaged in service at the same place and post and vicinity in which he was working prior to his illegal termination and the respondents be directed not to give artificial or fictional breaks and also issue muster-roll to the petitioner. It has further been prayed that the petitioner be granted permanent status by counting daily wage service as per the policy of the Government issued from time to time by condoning the artificial or fictional breaks for the purpose of 240 days.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability and delay and latches. On merits, it has been asserted that the petitioner was initially engaged during the year 2005 to carry out the seasonal forestry works in Bhajji Range of Shimla Forest Division and he had completed 240 days in the year 2006 only and thereafter he used to come on work as per his suitability and except 2006, the petitioner never completed 240 days in any calendar year. That no artificial /fictional breaks were given to the petitioner by the respondents and he is still working in Bhajji Range on bill basis as per latest instructions of the Government/Department. It is further asserted that the petitioner had worked from 2005 to 2011 on muster-roll basis but he did not complete 240 days in any calendar year except the year 2006 and thereafter he was engaged on bill basis and since the services of the petitioner were never terminated by the respondents, hence, the question of giving notice under section 25 of the Act does not arise and as far as the engagement of his juniors is concerned, the persons namely Nek Chand, Om Prakash, Tej Ram were engaged on work in compliance to award passed by this Court, hence, no violation has been committed by the respondents department in any manner with regard to disengagement of petitioner. The respondents prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondents.

5. On the pleadings of the parties, the following issues were framed:

(1) Whether the termination of the services of the petitioner by the respondents *w.e.f.* 1.3.2016 without complying with the provisions of Industrial Disputes Act, 1947 is illegalandunjustified? ..*OPP.*

(2) If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? ..*OPP.*

(3) Whether the petition is not maintainable as alleged? ..*OPR.*

(4) Whether the petition is hit by delay and latches as alleged? ..*OPR.*

(5) Relief

6. I have heard the learned counsel for the petitioner and Ld. ADA for respondents and also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under:

Issue No. 1: No
Issue No. 2: Becomes redundant
Issue No. 3: No
Issue No. 4 : Not pressed
Relief: Reference answered in favour of the respondents and against the petitioner per operative part of award.

REASONS FOR FINDINGS

Issues No. 1

8. The case of the petitioner is that he had completed 240 days in each calendar year and his services had been terminated by the respondents illegally without complying with the provisions of section 25-F of the Act. He further contended that the respondents are giving artificial/fictional breaks willfully in order to deprive the status of permanent workman to petitioner. He also contended the juniors to the petitioner are still working with the respondents in violation of the provisions of sections 25-G & 25-H of the Act.

9. On the other hand, the learned ADA contended that the petitioner was engaged as seasonal forest worker and his services were never terminated by the respondents who is still working with the department on bill basis. He further contended that the petitioner had never completed 240 days in any calendar year except the year 2006 and his juniors have been engaged on the basis of award passed by this Court.

10. To prove his case, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as made in the claim petition. He also tendered in evidence the copies of seniority list Mark PX and Mark PY. In cross-examination, he denied that he had never completed 240 days in any calendar year except the year 2006 and he was a seasonal forest worker. He admitted that he had worked on muster-roll basis from the year 2005 to the year 2011 and thereafter he is working on bill basis till date. He denied that no artificial breaks were given to him. He further denied that he used to come on his duty casually. He also denied that his services were never terminated. He denied that no junior person was retained.

11. PW-2 Shri Devi Singh, Deputy Ranger deposed that the name of the petitioner is reflected in the seniority list of daily wager of Bhajji Forest Range from the year 2005 till the year, 2011. He further stated that as per the record, Sita Devi was engaged on 1.2.2009 in Bhajji Forest Range and the department does not maintain the ercord about the working days of the labourers on bill basis. In cross-examination, he admitted that at the time of engagement of Sita Devi the petitioner was also working with the department. He further admitted that no daily wager was engaged after the year 2009. He also admitted that the petitioner is still working with the department on bill basis. He further admitted that as per the record, the petitioner had not completed 240 days in any calendar year except the year 2006.

12. On the other hand, the respondents have examined one Shri Ramesh Chand, Range Forest Officer Bhajji Range as RW-1 who tendered in evidence his affidavit Ex. RW- 1/A wherein

he reiterated almost all the averments as made in the reply. He also tendered in evidence the copy of mandays chart Ex. RW-1/B. In cross-examination, he admitted that the petitioner was engaged as a daily rated beldar on 1.1.2005 and he worked till 1.3.2016. He volunteered that the petitioner worked on muster-roll basis till the year 2011 and thereafter he had worked on bill basis. He denied that the petitioner had worked continuously till 2016. He admitted that no compensation was paid to the petitioner. He denied that artificial breaks were given to the petitioner. He further denied that the juniors to the petitioner have been retained. He admitted that Tej Ram, Om Prakash and Nek Chand are still working with the department, however, they have been retained as per the award of the Court. He denied that they are juniors to the petitioner. He further denied that the seniority is maintained at the division level. He stated that Sita Devi was engaged on 1.2.2009 as a daily wager on compassionate ground.

13. I have closely scrutinized the entire record of the case and after the closure scrutiny thereof it has become clear that the petitioner is still working with the respondents on bill basis. It has also become clear that the petitioner had worked with the respondents on the basis of muster roll *w.e.f.* 1.1.2005 and worked as such till the year 2011. The perusal of mandays chart Ex. PW-1/B goes to show that the petitioner had worked for 149 days in the year 2005, 258 days in the year 2006, 177 days in the year 2007, 214 days in the year 2008, 194 days in the year 2009, 219 days in the year, 2010 and 109 days in the year 2011. Thus, it is clear from the mandays chart Ex. PW-1/B, that the petitioner had completed 256 days only in the year 2006 and he has failed to prove on record that he had worked for 240 days in preceding twelve months prior to his termination. In **2009 (120) FLR 1007 in case titled as Relip Nagarpalika** Vs. **Babuji Gabhaji Thakore and others**, the Hon'ble Supreme Court has held as under:—

> **"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."**

In **AIR 2006 S.C. 110 case titled as Surindernagar District Panchayat** V/s **Dayabhai Amar Singh**, the Hon'ble Supreme Court has held that:—

> **"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."**

A bare perusal of the extract of the judgments re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. The perusal of mandays chart Ex. PW-1/B shows that the petitioner had completed 240 days only in the year 2006 and not in preceding twelve months from the date of his termination. No evidence to the contrary has been led by the petitioner to show that he had completed 240 days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

14. The learned counsel for the petitioner next contended that the respondents had retained the juniors namely Nek Chand, Om Prakash, Tej Ram and Sita Devi who are still working and besides this even fresh persons have been engaged by the respondents as such the respondents had violated the provisions of section 25-G & 25-H of the Act. However, in his evidence by way of affidavit RW-1 categorically stated that Nek Chand, Om Prakash and Tej Ram were engaged on work in compliance to the award passed by the Labour Court and no violation has been committed by the respondents in any manner with regard to the disengagement of the petitioner. Further in cross-examination, he categorically denied the suggestion that Nek Chand, Om Prakash and Tej Ram were juniors to the petitioner. He further deposed in cross-examination that Sita Devi was engaged on compassionate grounds. No evidence to the contrary has been led by the petitioner in order to show that Nek Ram, Om Prakash and Tej Ram were not engaged on the orders of the Court and Sita Devi was not engaged on compassionate grounds. No benefit can be derived by the petitioner from the seniority list mark PX and mark PY as the same have not been proved in accordance with law. No record has been summoned/produced by the petitioner in order to prove the aforesaid seniority lists. In fact, no cogent and satisfactory evidence has been led by the petitioner which could go to show that the respondents have retained the persons junior to him as per their own orders and not upon the orders of the Court and had also engaged fresh hands. Hence, in the absence of any cogent and satisfactory evidence on record, the case of the petitioner does not fall under section 25-G and 25-H of the Act.

15. Thus, in view of my foregoing discussion, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 1.3.2016 by the respondents is not illegal and unjustified. Accordingly, issue no.1 is decided in favour of the respondents and against the petitioner.

Issue No. 2:

16. Since, the petitioner has failed to prove issue no.1 above, this issue becomes redundant.

Issue No. 3:

17. In support of this issue, no evidence has been led by the respondents which could go to show as to how the present petition is not maintainable especially when the petitioner has filed the present petition pursuant to the reference sent by the appropriate government to this Court for adjudication and I find nothing wrong with the present petition which is perfectly maintainable. Therefore, in the absence of any evidence on record, it cannot be said the petition is not maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Issue No. 4:

18. During the course of arguments, this issue was not pressed by the learned ADA for respondents, hence, the same is decided in favour of the petitioner and against the respondents.

Relief:

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner fails and is hereby dismissed with the result the reference is answered in favour of the respondents and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 20th day of June, 2018.

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Ref. No.: 101 of 2017
Instituted on : 1-7-2017
Decided on : 20-6-2018

Ramesh Kumar s/o Shri Roop Chand, r/o Village Rounla, P.O Reog, Tehsil Sunni, District Shimla, H.P. ..*Petitioner.*

Vs.

1. The Divisional Forest Officer, Forest Division, Shimla, Mist Chamber Shimla, District Shimla, H.P.

2. The Range Officer, Forest Range Sunni, Tehsil Sunni, District Shimla, H.P. ..*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ajay Shandil, Advocate
For respondents : Shri Mahinder Singh, ADA

AWARD

The following reference has been received from appropriate government by this court for adjudication:—

"Whether the termination of the services of Shri Ramesh Kumar s/o Shri Roop Chand, r/o Village Rounla, P.O Reog Tehsil Sunni, District Shimla, H.P. *w.e.f.* 1.3.2016 by the Divisional Forest Officer, Forest Division Shimla H.P. allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back-wages, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. Briefly, the case of the petitioner is that initially he was engaged as daily rated beldar *w.e.f.* 1.4.2004 with the respondents and he was asked to work at Forest Range Sunni, Forest Division Shimla and since the date of his engagement, the petitioner had discharged his duties as assigned to him with full sincerity, honesty, devotion, missionary-zeal as well as to the entire satisfaction of his superiors and there has been no complaint against him. It is further stated that the petitioner had worked with the respondents till 29.2.2016 and thereafter his services were orally terminated by the respondents without giving any notice or assigning any reason and even the respondents are giving artificial/fictional breaks willfully in order to deprive his status of

permanent workman. That the employer is in the habit of not issuing muster-roll and taking the work on bill basis and had not marked the presence on muster-roll and from the date of his engagement the petitioner had worked continuously and had completed 240 days in each calendar year and also preceding to the date of his oral and illegal termination but neither any notice under section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) was given to the petitioner nor he was paid compensation. It is also stated that the regular work is available in Sunni Range and even the respondents have retained number of juniors in service whereas the services of the petitioner were terminated in violation of the principles of *audi alteram partem* as no opportunity of being heard had been afforded to him. Against this back-drop it has been prayed that the petitioner be ordered to be re-engaged in service at the same place and post and vicinity in which he was working prior to his illegal termination and the respondents be directed not to give artificial or fictional breaks and also issue muster-roll to the petitioner. It has further been prayed that the petitioner be granted permanent status by counting daily wage service as per the policy of the Government issued from time to time by condoning the artificial or fictional breaks for the purpose of 240 days.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability and delay and latches. On merits, it has been asserted that the petitioner was initially engaged during the year 2004 to carry out the seasonal forestry works in Bhajji Range of Shimla Forest Division and he had completed 240 days in the year 2007 only and thereafter he used to come on work as per his suitability and except 2007, the petitioner never completed 240 days in any calendar year. That no artificial /fictional breaks were given to the petitioner by the respondents and he is still working in Bhajji Range on bill basis as per latest instructions of the Government/Department. It is further asserted that the petitioner had worked from 2004 to 2011 on muster-roll basis but he did not complete 240 days in any calendar year except the year 2007 and thereafter he was engaged on bill basis and since the services of the petitioner were never terminated by the respondents, hence, the question of giving notice under section 25 of the Act does not arise and as far as the engagement of his juniors is concerned, the persons namely Nek Chand, Om Prakash, Tej Ram were engaged on work in compliance to award passed by this Court, hence, no violation has been committed by the respondents department in any manner with regard to disengagement of petitioner. The respondents prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondents.

5. On the pleadings of the parties, the following issues were framed:—

(1) Whether the termination of the services of the petitioner by the respondents *w.e.f.* 1.3.2016 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified? ..*OPP.*

(2) If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? ..*OPP.*

(3) Whether the petition is not maintainable as alleged? ..*OPR.*

(4) Whether the petition is hit by delay and latches as alleged? ..*OPR.*

(5) Relief

6. I have heard the learned counsel for the petitioner and Ld. ADA for respondents and also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under:—

Issue No. 1: No
Issue No. 2: Becomes redundant
Issue No. 3: No
Issue No. 4: Not pressed
Relief: Reference answered in favour of the respondents and against the petitioner per operative part of award.

REASONS FOR FINDINGS

Issues No. 1:

8. The case of the petitioner is that he had completed 240 days in each calendar year and his services had been terminated by the respondents illegally without complying with the provisions of section 25-F of the Act. He further contended that the respondents are giving artificial/fictional breaks willfully in order to deprive the status of permanent workman to petitioner. He also contended the juniors to the petitioner are still working with the respondents in violation of the provisions of sections 25-G & 25-H of the Act.

9. On the other hand, the learned ADA contended that the petitioner was engaged as seasonal forest worker and his services were never terminated by the respondents who is still working with the department on bill basis. He further contended that the petitioner had never completed 240 days in any calendar year except the year 2007 and his juniors have been engaged on the basis of award passed by this Court.

10. To prove his case, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as made in the claim petition. He also tendered in evidence the copies of seniority list Mark PX and Mark PY. In crosse-xamination, he denied that he had never completed 240 days in any calendar year. He further denied that he had worked on muster-roll basis from the year 2005 to the year 2011. He admitted that he has been working on bill basis for the year 2011 and at present also he is working on bill basis. He denied that the department had not given him the artificial breaks. He admitted that the department used to call him for work whenever the funds are available. He also denied that his services were never terminated. He denied that no junior person was retained.

11. PW-2 Shri Devi Singh, Deputy Ranger deposed that the name of the petitioner is reflected in the seniority list of daily wager of Bhajji Forest Range from the year 2004 till the year 2011. He further stated that as per the record, Sita Devi was engaged on 1.2.2009 in Bhajji Forest Range and the department does not maintain the record about the working days of the labourers on bill basis. In cross-examination, he admitted that at the time of engagement of Sita Devi the petitioner was also working with the department. He further admitted that no daily wager was engaged after the year 2009. He also admitted that the petitioner is still working with the department on bill basis. He further admitted that as per the record, the petitioner had not completed 240 days in any calendar year except the year 2007.

12. On the other hand, the respondents have examined one Shri Ramesh Chand, Range Forest Officer Bhajji Range as RW-1 who tendered in evidence his affidavit Ex. RW- 1/A wherein

he reiterated almost all the averments as made in the reply. He also tendered in evidence the copy of mandays chart Ex. RW-1/B. In cross-examination, he admitted that the petitioner was engaged as a daily rated beldar on 1.6.2004 and he worked till 1.3.2016. He volunteered that the petitioner worked on muster-roll basis till the year 2011 and thereafter he had worked on bill basis. He denied that the petitioner had worked continuously till 2016. He admitted that no compensation was paid to the petitioner. He denied that artificial breaks were given to the petitioner. He further denied that the juniors to the petitioner have been retained. He admitted that Tej Ram, Om Prakash and Nek Chand are still working with the department, however, they have been retained as per the award of the Court. He denied that they are juniors to the petitioner. He further denied that the seniority is maintained at the division level. He stated that Sita Devi was engaged on 1.2.2009 as a daily wager on compassionate ground.

13. I have closely scrutinized the entire record of the case and after the closure scrutiny thereof it has become clear that the petitioner is still working with the respondents on bill basis. It has also become clear that the petitioner had worked with the respondents on the basis of muster roll *w.e.f.* 1.6.2004 and worked as such till the year 2011. The perusal of mandays chart Ex. PW-1/B goes to show that the petitioner had worked for 69 days in the year 2004, 184 days in the year 2005, 213 days in the year 2006, 248 days in the year 2007, 232 days in the year, 2008, 211 days in the year 2009, 229 days in the year 2010 and 115 days in the year 2011. Thus, it is clear from the mandays chart Ex. PW-1/B, that the petitioner had completed 248 days only in the year 2007 and he has failed to prove on record that he had worked for 240 days in preceding twelve months prior to his termination. In **2009 (120) FLR 1007 in case titled as Relip Nagarpalika** *Vs*. **Babuji Gabhaji Thakore and others,** the Hon'ble Supreme Court has held as under:—

> **"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."**

In AIR 2006 S.C. 110 case titled as Surindernagar District Panchayat *V/s* **Dayabhai Amar Singh,** the Hon'ble Supreme Court has held that:-

> **"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."**

A bare perusal of the extract of the judgments re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. The perusal of mandays chart Ex. PW-1/B shows that the petitioner had completed 240 days only in the year 2007 and not in preceding twelve months from the date of his termination. No evidence to the contrary has been led by the petitioner to show that he had completed 240 days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

14. The learned counsel for the petitioner next contended that the respondents had retained the juniors namely Nek Chand, Om Prakash, Tej Ram and Sita Devi who are still working and besides this even fresh persons have been engaged by the respondents as such the respondents had violated the provisions of section 25-G & 25-H of the Act. However, in his evidence by way of affidavit RW-1 categorically stated that Nek Chand, Om Prakash and Tej Ram were engaged on work in compliance to the award passed by the Labour Court and no violation has been committed by the respondents in any manner with regard to the disengagement of the petitioner. Further in cross-examination, he categorically denied the suggestion that Nek Chand, Om Prakash and Tej Ram were juniors to the petitioner. He further deposed in cross-examination that Sita Devi was engaged on compassionate grounds. No evidence to the contrary has been led by the petitioner in order to show that Nek Ram, Om Prakash and Tej Ram were not engaged on the orders of the Court and Sita Devi was not engaged on compassionate grounds. No benefit can be derived by the petitioner from the seniority list mark PX and mark PY as the same have not been proved in accordance with law. No record has been summoned/produced by the petitioner in order to prove the aforesaid seniority lists. In fact, no cogent and satisfactory evidence has been led by the petitioner which could go to show that the respondents have retained the persons junior to him as per their own orders and not upon the orders of the Court and had also engaged fresh hands. Hence, in the absence of any cogent and satisfactory evidence on record, the case of the petitioner does not fall under section 25-G and 25-H of the Act.

15. Thus, in view of my foregoing discussion, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 1.3.2016 by the respondents is not illegal and unjustified. Accordingly, issue no.1 is decided in favour of the respondents and against the petitioner.

Issue No. 2:

16. Since, the petitioner has failed to prove issue no.1 above, this issue becomes redundant.

Issue No. 3:

17. In support of this issue, no evidence has been led by the respondents which could go to show as to how the present petition is not maintainable especially when the petitioner has filed the present petition pursuant to the reference sent by the appropriate government to this Court for adjudication and I find nothing wrong with the present petition which is perfectly maintainable. Therefore, in the absence of any evidence on record, it cannot be said the petition is not maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Issue No. 4:

18. During the course of arguments, this issue was not pressed by the learned ADA for respondents, hence, the same is decided in favour of the petitioner and against the respondents.

Relief:

As a sequel to my above discussion and findings on issues No.1 to 4, the claim of the petitioner fails and is hereby dismissed with the result the reference is answered in favour of the respondents and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 20th day of June, 2018.

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Ref. No. : 102 of 2017
Instituted on : 1-7-2017
Decided on : 20-6-2018

Nek Ram s/o Shri Shiv Ram, r/o Village Reog, Post Office Reog (Gungli), Tehsil Sunni, District Shimla, H.P. ..*Petitioner.*

Vs.

1. The Divisional Forest Officer, Forest Division, Shimla, Mist Chamber Shimla, District Shimla, H.P.

2. The Range Officer, Forest Range Sunni, Tehsil Sunni, District Shimla, H.P...*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ajay Shandil, Advocate
For respondents : Shri Mahinder Singh, ADA

AWARD

The following reference has been received from appropriate government by this court for adjudication:—

"Whether the termination of the services of Shri Nek Ram s/o Shri Shiv Ram, r/o Village Reog, Post Office Reog (Gungli), Tehsil Sunni, District Shimla (H.P.) *w.e.f.* 1.3.2016 by the Divisional Forest Officer, Forest Division Shimla H.P. allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back-wages, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. Briefly, the case of the petitioner is that initially he was engaged as daily rated beldar *w.e.f.* 1.4.2005 with the respondents and he was asked to work at Forest Range Sunni, Forest Division Shimla and since the date of his engagement, the petitioner had discharged his duties as assigned to him with full sincerity, honesty, devotion, missionary-zeal as well as to the entire satisfaction of his superiors and there has been no complaint against him. It is further stated that the petitioner had worked with the respondents till 29.2.2016 and thereafter his services were orally terminated by the respondents without giving any notice or assigning any reason and even the

respondents are giving artificial/fictional breaks willfully in order to deprive his status of permanent workman. That the employer is in the habit of not issuing muster-roll and taking the work on bill basis and had not marked the presence on muster-roll and from the date of his engagement the petitioner had worked continuously and had completed 240 days in each calendar year and also preceding to the date of his oral and illegal termination but neither any notice under section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) was given to the petitioner nor he was paid compensation. It is also stated that the regular work is available in Sunni Range and even the respondents have retained number of juniors in service whereas the services of the petitioner were terminated in violation of the principles of *audi alteram partem* as no opportunity of being heard had been afforded to him. Against this back-drop it has been prayed that the petitioner be ordered to be re-engaged in service at the same place and post and vicinity in which he was working prior to his illegal termination and the respondents be directed not to give artificial or fictional breaks and also issue muster-roll to the petitioner. It has further been prayed that the petitioner be granted permanent status by counting daily wage service as per the policy of the Government issued from time to time by condoning the artificial or fictional breaks for the purpose of 240 days.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability and delay and latches. On merits, it has been asserted that the petitioner was initially engaged during the year 2005 to carry out the seasonal forestry works in Bhajji Range of Shimla Forest Division and he had completed 240 days in the year 2006 only and thereafter he used to come on work as per his suitability and except 2006, the petitioner never completed 240 days in any calendar year. That no artificial /fictional breaks were given to the petitioner by the respondents and he is still working in Bhajji Range on bill basis as per latest instructions of the Government/Department. It is further asserted that the petitioner had worked from 2005 to 2011 on muster-roll basis but he did not complete 240 days in any calendar year except the year 2006 and thereafter he was engaged on bill basis and since the services of the petitioner were never terminated by the respondents, hence, the question of giving notice under section 25 of the Act does not arise and as far as the engagement of his juniors is concerned, the persons namely Nek Chand, Om Prakash, Tej Ram were engaged on work in compliance to award passed by this Court, hence, no violation has been committed by the respondents department in any manner with regard to disengagement of petitioner. The respondents prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondents.

5. On the pleadings of the parties, the following issues were framed:—

(1) Whether the termination of the services of the petitioner by the respondents *w.e.f.* 1.3.2016 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified? ..*OPP.*

(2) If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? ..*OPP.*

(3) Whether the petition is not maintainable as alleged? ..*OPR.*

(4) Whether the petition is hit by delay and latches as alleged? ..*OPR.*

(5) Relief

6. I have heard the learned counsel for the petitioner and Ld. ADA for respondents and also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under:—

Issue No. 1: No
Issue No. 2: Becomes redundant
Issue No. 3: No
Issue No. 4: Not pressed
Relief: Reference answered in favour of the respondents and against the petitioner per operative part of award.

REASONS FOR FINDINGS

Issues No. 1:

8. The case of the petitioner is that he had completed 240 days in each calendar year and his services had been terminated by the respondents illegally without complying with the provisions of section 25-F of the Act. He further contended that the respondents are giving artificial/fictional breaks willfully in order to deprive the status of permanent workman to petitioner. He also contended the juniors to the petitioner are still working with the respondents in violation of the provisions of sections 25-G & 25-H of the Act.

9. On the other hand, the learned ADA contended that the petitioner was engaged as seasonal forest worker and his services were never terminated by the respondents who is still working with the department on bill basis. He further contended that the petitioner had never completed 240 days in any calendar year except the year 2006 and his juniors have been engaged on the basis of award passed by this Court.

10. To prove his case, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as made in the claim petition. He also tendered in evidence the copies of seniority list Mark PX and Mark PY. In cross-examination, he denied that he had never completed 240 days in any calendar year except the year 2006. He admitted that he had worked on muster-roll basis from the year 2005 to the year, 2011 and thereafter he is working on bill basis from the year 2011 and at present he is working on bill basis. He admitted that the department used to call him for work whenever the funds are available. He denied that his services were never terminated. He denied that no junior person was retained.

11. PW-2 Shri Devi Singh, Deputy Ranger deposed that the name of the petitioner is reflected in the seniority list of daily wager of Bhajji Forest Range from the year 2005 till the year 2011. He further stated that as per the record, Sita Devi was engaged on 1.2.2009 in Bhajji Forest Range and the department does not maintain the ercord about the working days of the labourers on bill basis. In cross-examination, he admitted that at the time of engagement of Sita Devi the petitioner was also working with the department. He further admitted that no daily wager was engaged after the year 2009. He also admitted that the petitioner is still working with the department on bill basis. He further admitted that as per the record, the petitioner had not completed 240 days in any calendar year except the year 2006.

12. On the other hand, the respondents have examined one Shri Ramesh Chand, Range Forest Officer Bhajji Range as RW-1 who tendered in evidence his affidavit Ex. RW- 1/A wherein

he reiterated almost all the averments as made in the reply. He also tendered in evidence the copy of mandays chart Ex. RW-1/B. In cross-examination, he admitted that the petitioner was engaged as a daily rated beldar on 1.1.2005 and he worked till 1.3.2016. He volunteered that the petitioner worked on muster-roll basis till the year, 2011 and thereafter he had worked on bill basis. He denied that the petitioner had worked continuously till 2016. He admitted that no compensation was paid to the petitioner. He denied that artificial breaks were given to the petitioner. He further denied that the juniors to the petitioner have been retained. He admitted that Tej Ram, Om Prakash and Nek Chand are still working with the department, however, they have been retained as per the award of the Court. He denied that they are juniors to the petitioner. He further denied that the seniority is maintained at the division level. He stated that Sita Devi was engaged on 1.2.2009 as a daily wager on compassionate ground.

13. I have closely scrutinized the entire record of the case and after the closure scrutiny thereof it has become clear that the petitioner is still working with the respondents on bill basis. It has also become clear that the petitioner had worked with the respondents on the basis of muster-roll *w.e.f.* 1.1.2005 and worked as such till the year 2011. The perusal of mandays chart Ex. PW-1/B goes to show that the petitioner had worked for 41 days in the year 2005, 253 days in the year 2006, 187 days in the year 2007, 207 days in the year 2008, 89 days in the year 2009, 229 days in the year 2010 and 120 days in the year 2011. Thus, it is clear from the mandays chart Ex. PW-1/B, that the petitioner had completed 253 days only in the year 2006 and he has failed to prove on record that he had worked for 240 days in preceding twelve months prior to his termination. In **2009 (120) FLR 1007 in case titled as Relip Nagarpalika** *Vs.* **Babuji Gabhaji Thakore and others** , the Hon'ble Supreme Court has held as under:—

> **"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."**

In **AIR 2006 S.C. 110 case titled as Surindernagar District Panchayat** *V/s* **Dayabhai Amar Singh,** the Hon'ble Supreme Court has held that:—

> **"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."**

A bare perusal of the extract of the judgments re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. The perusal of mandays chart Ex. PW-1/B shows that the petitioner had completed 240 days only in the year 2006 and not in preceding twelve months from the date of his termination. No evidence to the contrary has been led by the petitioner to show that he had completed 240 days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

14. The learned counsel for the petitioner next contended that the respondents had retained the juniors namely Nek Chand, Om Prakash, Tej Ram and Sita Devi who are still working

and besides this even fresh persons have been engaged by the respondents as such the respondents had violated the provisions of section 25-G & 25-H of the Act. However, in his evidence by way of affidavit RW-1 categorically stated that Nek Chand, Om Prakash and Tej Ram were engaged on work in compliance to the award passed by the Labour Court and no violation has been committed by the respondents in any manner with regard to the disengagement of the petitioner. Further in cross-examination, he categorically denied the suggestion that Nek Chand, Om Prakash and Tej Ram were juniors to the petitioner. He further deposed in cross-examination that Sita Devi was engaged on compassionate grounds. No evidence to the contrary has been led by the petitioner in order to show that Nek Ram, Om Prakash and Tej Ram were not engaged on the orders of the Court and Sita Devi was not engaged on compassionate grounds. No benefit can be derived by the petitioner from the seniority list mark PX and mark PY as the same have not been proved in accordance with law. No record has been summoned/produced by the petitioner in order to prove the aforesaid seniority lists. In fact, no cogent and satisfactory evidence has been led by the petitioner which could go to show that the respondents have retained the persons junior to him as per their own orders and not upon the orders of the Court and had also engaged fresh hands. Hence, in the absence of any cogent and satisfactory evidence on record, the case of the petitioner does not fall under section 25-G and 25-H of the Act.

15. Thus, in view of my foregoing discussion, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 1.3.2016 by the respondents is not illegal and unjustified. Accordingly, issue No.1 is decided in favour of the respondents and against the petitioner.

Issue No. 2:

16. Since, the petitioner has failed to prove issue No.1 above, this issue becomes redundant.

Issue No. 3:

17. In support of this issue, no evidence has been led by the respondents which could go to show as to how the present petition is not maintainable especially when the petitioner has filed the present petition pursuant to the reference sent by the appropriate government to this Court for adjudication and I find nothing wrong with the present petition which is perfectly maintainable. Therefore, in the absence of any evidence on record, it cannot be said the petition is not maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Issue No. 4:

18. During the course of arguments, this issue was not pressed by the learned ADA for respondents, hence, the same is decided in favour of the petitioner and against the respondents.

Relief:

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner fails and is hereby dismissed with the result the reference is answered in favour of the respondents and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 20th day of June, 2018.

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref. No.: 113 of 2017
Instituted on: 10-7-2017
Decided on: 20-6-2018

Bhupinder Singh s/o Shri Paras Ram, r/o Village Panhera, P.O Chaba, Tehsil Sunni, District Shimla, H.P. ..*Petitioner.*

VS.

1. The Divisional Forest Officer, Forest Division Shimla, Mist Chamber Shimla, District Shimla, H.P.

2. The Range Officer, Forest Range Sunni, Tehsil Sunni, District Shimla, H.P. ..*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ajay Shandil, Advocate
For respondents : Shri Mahinder Singh, ADA

AWARD

The following reference has been received from appropriate government by this court for adjudication:—

"Whether the termination of the services of Shri Bhupinder Singh s/o Shri Paras Ram, r/o Village Panhera, P.O Chaba, Tehsil Sunni, District Shimla (H.P.) *w.e.f.* 1.4.2016 by the Divisional Forest Officer, Forest Division Shimla H.P. allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of backwages, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. Briefly, the case of the petitioner is that initially he was engaged as daily rated beldar *w.e.f.* 1.7.2004 with the respondents and he was asked to work at Forest Range Sunni, Forest Division Shimla and since the date of his engagement, the petitioner had discharged his duties as assigned to him with full sincerity, honesty, devotion, missionary-zeal as well as to the entire satisfaction of his superiors and there has been no complaint against him. It is further stated that the petitioner had worked with the respondents till 31.3.2016 and thereafter his services were orally terminated by the respondents without giving any notice or assigning any reason and even the respondents are giving artificial/fictional breaks willfully in order to deprive his status of permanent workman. That the employer is in the habit of not issuing muster roll and taking the work on bill basis and had not marked the presence on muster-roll and from the date of his engagement the petitioner had worked continuously and had completed 240 days in each calendar year and also preceding to the date of his oral and illegal termination but neither any notice under section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) was given to the petitioner nor he was paid compensation. It is also stated that the regular work is available in Sunni Range and even the respondents have retained number of juniors in service whereas the services of the petitioner were terminated in violation of the principles of *audi alteram partem* as no

opportunity of being heard had been afforded to him. Against this back-drop it has been prayed that the petitioner be ordered to be re-engaged in service at the same place and post and vicinity in which he was working prior to his illegal termination and the respondents be directed not to give artificial or fictional breaks and also issue muster-roll to the petitioner. It has further been prayed that the petitioner be granted permanent status by counting daily wage service as per the policy of the Government issued from time to time by condoning the artificial or fictional breaks for the purpose of 240 days.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability and delay and latches. On merits, it has been asserted that the petitioner was initially engaged during the year 2007 to carry out the seasonal forestry works in Bhajji Range of Shimla Forest Division and he had not completed 240 days in any calendar year and thereafter he left the work and he used to come on work as per his suitability. That no artificial /fictional breaks were given to the petitioner by the respondents and he is still working in Bhajji Range on bill basis as per latest instructions of the Government/Department. It is further asserted that the petitioner had worked from 2007 to 2010 on muster-roll basis but he did not complete 240 days in any calendar year and thereafter he was engaged on bill basis and since the services of the petitioner were never terminated by the respondents, hence, the question of giving notice under section 25 of the Act does not arise and as far as the engagement of his juniors is concerned, the persons namely Nek Chand, Om Prakash, Tej Ram were engaged on work in compliance to award passed by this Court, hence, no violation has been committed by the respondents department in any manner with regard to disengagement of petitioner. The respondents prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondents.

5. On the pleadings of the parties, the following issues were framed:—

(1) Whether the termination of the services of the petitioner by the respondents *w.e.f.* 1.4.2016 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified? ..*OPP.*

(2) If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? ..*OPP.*

(3) Whether the petition is not maintainable as alleged? ..*OPR.*

(4) Whether the petition is hit by delay and latches as alleged? ..*OPR.*

(5) Relief

6. I have heard the learned counsel for the petitioner and Ld. ADA for respondents and also gone through the record of the case carefully:—

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

*Issue No.*1 : No
Issue No. 2 : Becomes redundant
Issue No. 3 : No
Issue No. 4 : Not pressed

Relief : Reference answered in favour of the respondents and against the petitioner per operative part of award.

REASONS FOR FINDINGS

Issues No. 1:

8. The case of the petitioner is that he had completed 240 days in each calendar year and his services had been terminated by the respondents illegally without complying with the provisions of section 25-F of the Act. He further contended that the respondents are giving artificial/fictional breaks willfully in order to deprive the status of permanent workman to petitioner. He also contended the juniors to the petitioner are still working with the respondents in violation of the provisions of sections 25-G & 25-H of the Act.

9. On the other hand, the learned ADA contended that the petitioner was engaged as seasonal forest worker and his services were never terminated by the respondents who is still working with the department on bill basis. He further contended that the petitioner had never completed 240 days in any calendar year and his juniors have been engaged on the basis of award passed by this Court.

10. To prove his case, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as made in the claim petition. In cross-examination, he denied that he had not completed 240 days in any calendar year. He admitted that he is still working with the department. He denied that the department had never gave him artificial breaks. He further denied that he was never terminated by the department. He also denied that no junior was engaged. He admitted that he is working on bill basis with the department after the year 2011.

11. PW-2 Shri Devi Singh, Deputy Ranger deposed that the name of the petitioner is reflected in the seniority list of daily wager of Bhajji Forest Range from the year 2007 till the year 2010. He further stated that as per the record, Sita Devi was engaged on 1.2.2009 in Bhajji Forest Range and the department does not maintain the record about the working days of the labourers on bill basis. In cross-examination, he admitted that at the time of engagement of Sita Devi the petitioner was also working with the department. He further admitted that no daily wager was engaged after the year 2009. He also admitted that the petitioner is still working with the department on bill basis. He further admitted that as per the record, the petitioner had not completed 240 days in any calendar year.

12. On the other hand, the respondents have examined one Shri Ramesh Chand, Range Forest Officer Bhajji Range as RW-1 who tendered in evidence his affidavit Ex. RW- 1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the copy of mandays chart Ex. RW-1/B. In cross-examination, he admitted that the petitioner was engaged on 1.4.2007 and he worked till 29.2.2016. He volunteered that the petitioner worked on muster-roll basis till the year 2011 and thereafter he had worked on bill basis. He denied that the petitioner had worked continuously till 2016. He admitted that no compensation was paid to the petitioner. He denied that artificial breaks were given to the petitioner. He further denied that the juniors to the petitioner have been retained. He admitted that Tej Ram, Om Prakash and Nek Chand are still working with the department, however, they have been retained as per the award of the Court. He denied that they are juniors to the petitioner. He further denied that the seniority is maintained at the division level. He stated that Sita Devi was engaged on 1.2.2009 as a daily wager on compassionate ground.

13. I have closely scrutinized the entire record of the case and after the closure scrutiny thereof it has become clear that the petitioner is still working with the respondents on bill basis. It has also become clear that the petitioner had worked with the respondents on the basis of muster roll *w.e.f.* the year 2007 and worked as such till the year 2010. The perusal of mandays chart Ex. PW-1/B goes to show that the petitioner had worked for 97 days in the year 2007, 161 days in the year, 2008 and 8 days in the year 2010. Thus, it is clear from the mandays chart Ex. PW-1/B, that the petitioner had not completed 240 days in any calendar year and he has failed to prove on record that he had worked for 240 days in preceding twelve months prior to his termination. In **2009 (120) FLR 1007 incase titled as Relip Nagarpalika** *Vs.* **Babuji Gabhaji Thakore and others,** the Hon'ble Supreme Court has held as under:—

> **"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."**

In AIR 2006 S.C. 110 case titled as Surindernagar District Panchayat ***V/s*** **Dayabhai Amar Singh,** the Hon'ble Supreme Court has held that:—

> **"In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."**

A bare perusal of the extract of the judgments re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. The perusal of mandays chart Ex. PW-1/B shows that the petitioner had not completed 240 days in any calendar year and in preceding twelve months from the date of his termination. No evidence to the contrary has been led by the petitioner to show that he had completed 240 days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

14. The learned counsel for the petitioner next contended that the respondents had retained the juniors namely Nek Chand, Om Prakash, Tej Ram and Sita Devi who are still working and besides this even fresh persons have been engaged by the respondents as such the respondents had violated the provisions of section 25-G & 25-H of the Act. However, in his evidence by way of affidavit RW-1 categorically stated that Nek Chand, Om Prakash and Tej Ram were engaged on work in compliance to the award passed by the Labour Court and no violation has been committed by the respondents in any manner with regard to the disengagement of the petitioner. Further in cross-examination, he categorically denied the suggestion that Nek Chand, Om Prakash and Tej Ram were juniors to the petitioner. He further deposed in cross-examination that Sita Devi was engaged on compassionate grounds. No evidence to the contrary has been led by the petitioner in order to show that Nek Ram, Om Prakash and Tej Ram were not engaged on the orders of the Court and Sita Devi was not engaged on compassionate grounds. In fact, no cogent and satisfactory evidence has been led by the petitioner which could go to show that the respondents have retained the persons junior to him as per their own orders and not upon the orders of the Court and had also engaged fresh hands. Hence, in the absence of any cogent and satisfactory evidence on record, the case of the petitioner does not fall under section 25-G and 25-H of the Act.

15. Thus, in view of my foregoing discussion, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 1.3.2016 by the respondents is not illegal and unjustified. Accordingly, issue No.1 is decided in favour of the respondents and against the petitioner.

Issue No. 2:

16. Since, the petitioner has failed to prove issue No.1 above, this issue becomes redundant.

Issue No. 3:

17. In support of this issue, no evidence has been led by the respondents which could go to show as to how the present petition is not maintainable especially when the petitioner has filed the present petition pursuant to the reference sent by the appropriate government to this Court for adjudication and I find nothing wrong with the present petition which is perfectly maintainable. Therefore, in the absence of any evidence on record, it cannot be said the petition is not maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Issue No. 4:

18. During the course of arguments, this issue was not pressed by the learned ADA for respondents, hence, the same is decided in favour of the petitioner and against the respondents.

Relief:

As a sequel to my above discussion and findings on issues No.1 to 4, the claim of the petitioner fails and is hereby dismissed with the result the reference is answered in favour of the respondents and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 20th day of June, 2018.

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Ref. No : 106 of 2017
Instituted on: 3-7-2017
Decided on: 20-6-2018

Deep Ram s/o Shri Uma Dass, r/o Village Bharara, P.O Bharara, Tehsil Sunni, District Shimla, H.P. ..*Petitioner.*

Vs

1. The Divisional Forest Officer, Forest Division, Shimla, Mist Chamber Shimla District Shimla, H.P.

2. The Range Officer, Forest Range Sunni, Tehsil Sunni District Shimla, H.P.

..Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ajay Shandil, Advocate
For respondents : Shri Mahinder Singh, ADA

AWARD

The following reference has been received from appropriate government by this court for adjudication:—

"Whether the termination of the services of Shri Deep Ram s/o Shri Uma Dass, r/o Village Bharara, P.O Bharara, Tehsil Sunni, District Shimla (H.P.) *w.e.f.* 1.3.2016 by the Divisional Forest Officer, Forest Division Shimla H.P. allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back-wages, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. Briefly, the case of the petitioner is that initially he was engaged as daily rated beldar *w.e.f.* 6.3.2005 with the respondents and he was asked to work at Forest Range Sunni, Forest Division Shimla and since the date of his engagement, the petitioner had discharged his duties as assigned to him with full sincerity, honesty, devotion, missionary-zeal as well as to the entire satisfaction of his superiors and there has been no complaint against him. It is further stated that the petitioner had worked with the respondents till 29.2.2016 and thereafter his services were orally terminated by the respondents without giving any notice or assigning any reason and even the respondents are giving artificial/fictional breaks willfully in order to deprive his status of permanent workman. That the employer is in the habit of not issuing muster-roll and taking the work on bill basis and had not marked the presence on muster-roll and from the date of his engagement the petitioner had worked continuously and had completed 240 days in each calendar year and also preceding to the date of his oral and illegal termination but neither any notice under section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) was given to the petitioner nor he was paid compensation. It is also stated that the regular work is available in Sunni Range and even the respondents have retained number of juniors in service whereas the services of the petitioner were terminated in violation of the principles of *audi alteram partem* as no opportunity of being heard had been afforded to him. Against this back-drop it has been prayed that the petitioner be ordered to be re-engaged in service at the same place and post and vicinity in which he was working prior to his illegal termination and the respondents be directed not to give artificial or fictional breaks and also issue muster-roll to the petitioner. It has further been prayed that the petitioner be granted permanent status by counting daily wage service as per the policy of the Government issued from time to time by condoning the artificial or fictional breaks for the purpose of 240 days.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability and delay and latches. On merits, it has been asserted that the petitioner was initially engaged during the year 2006 to carry out the seasonal forestry works in Bhajji Range of Shimla Forest Division and he had not completed 240 days in

any calendar year and thereafter he left the work and he used to come on work as per his suitability. That no artificial /fictional breaks were given to the petitioner by the respondents and he is still working in Bhajji Range on bill basis as per latest instructions of the Government/Department. It is further asserted that the petitioner had worked from 2006 to 2011 on muster-roll basis but he did not complete 240 days in any calendar year and thereafter he was engaged on bill basis and since the services of the petitioner were never terminated by the respondents, hence, the question of giving notice under section 25 of the Act does not arise and as far as the engagement of his juniors is concerned, the persons namely Nek Chand, Om Prakash, Tej Ram were engaged on work in compliance to award passed by this Court, hence, no violation has been committed by the respondents department in any manner with regard to disengagement of petitioner. The respondents prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondents.

5. On the pleadings of the parties, the following issues were framed:—

(1) Whether the termination of the services of the petitioner by the respondents *w.e.f.* 1.3.2016 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified? ..*OPP.*

(2) If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? ..*OPP.*

(3) Whether the petition is not maintainable as alleged? ..*OPR.*

(4) Whether the petition is hit by delay and latches as alleged? ..*OPR.*

(5) Relief.

6. I have heard the learned counsel for the petitioner and Ld. ADA for respondents and also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under:—

Issue No. 1	: No
Issue No. 2	: Becomes redundant
Issue No. 3	: No
Issue No. 4	: Not pressed.
Relief	: Reference answered in favour of the respondents and against the petitioner per operative part of award.

REASONS FOR FINDINGS

Issues No. 1:

8. The case of the petitioner is that he had completed 240 days in each calendar year and his services had been terminated by the respondents illegally without complying with the provisions of section 25-F of the Act. He further contended that the respondents are giving artificial/fictional breaks willfully in order to deprive the status of permanent workman to petitioner. He also contended the juniors to the petitioner are still working with the respondents in violation of the provisions of sections 25-G & 25-H of the Act.

9. On the other hand, the learned ADA contended that the petitioner was engaged as seasonal forest worker and his services were never terminated by the respondents who is still working with the department on bill basis. He further contended that the petitioner had never completed 240 days in any calendar year and his juniors have been engaged on the basis of award passed by this Court.

10. To prove his case, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as made in the claim petition. He also tendered in evidence the copies of seniority list Mark PX and Mark PY. In cross-examination, he denied that he had never completed 240 days in any calendar year. He admitted that he is still working with the department. He denied that the department never gave him the artificial breaks. He further denied that he was never terminated by the department. He also denied that no junior was engaged. He admitted that Nek Chand, Om Prakash and Tej Ram were engaged by the orders of the Court.

11. PW-2 Shri Devi Singh, Deputy Ranger deposed that the name of the petitioner is reflected in the seniority list of daily wager of Bhajji Forest Range from the year 2005 till the year 2011. He further stated that as per the record, Sita Devi was engaged on 1.2.2009 in Bhajji Forest Range and the department does not maintain the record about the working days of the labourers on bill basis. In cross-examination, he admitted that at the time of engagement of Sita Devi the petitioner was also working with the department. He further admitted that no daily wager was engaged after the year 2009. He also admitted that the petitioner is still working with the department on bill basis. He further admitted that as per the record, the petitioner had not completed 240 days in any calendar year.

12. On the other hand, the respondents have examined one Shri Ramesh Chand, Range Forest Officer Bhajji Range as RW-1 who tendered in evidence his affidavit Ex. RW- 1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the copy of mandays chart Ex. RW-1/B. In cross-examination, he stated that the petitioner was engaged in the month of July 2006 and he worked till 1.3.2016. He volunteered that the petitioner worked on muster-roll basis till the year 2011 and thereafter he had worked on bill basis. He denied that the petitioner had worked continuously till 2016. He admitted that no compensation was paid to the petitioner. He denied that artificial breaks were given to the petitioner. He further denied that the juniors to the petitioner have been retained. He admitted that Tej Ram, Om Prakash and Nek Chand are still working with the department, however, they have been retained as per the award of the Court. He denied that they are juniors to the petitioner. He further denied that the seniority is maintained at the division level. He stated that Sita Devi was engaged on 1.2.2009 as a daily wager on compassionate ground.

13. I have closely scrutinized the entire record of the case and after the closure scrutiny thereof it has become clear that the petitioner is still working with the respondents on bill basis. It has also become clear that the petitioner had worked with the respondents on the basis of muster-roll *w.e.f.* the year, 2006 and worked as such till the year 2011. The perusal of mandays chart Ex. PW-1/B goes to show that the petitioner had worked for 10 days in the year 2006, 84 days in the year 2009, 153 days in the year 2010 and 48 days in the year 2011. Thus, it is clear from the mandays chart Ex. PW- 1/B, that the petitioner had not completed 240 days in any calendar year and he has failed to prove on record that he had worked for 240 days in preceding twelve months prior to his termination. In **2009 (120) FLR 1007 incase titled as Relip Nagarpalika** Vs. **Babuji Gabhaji Thakore and others,** the Hon'ble Supreme Court has held as under:—

"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence

apart from examining himself to prove the factum of being in employment of the employer."

In **AIR 2006 S.C. 110 case titled as Surindernagar District Panchayat** V/s **Dayabhai Amar Singh,** the Hon'ble Supreme Court has held that:—

"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."

A bare perusal of the extract of the judgments re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. The perusal of mandays chart Ex. PW-1/B shows that the petitioner had not completed 240 days only in any calendar year, and in preceding twelve months from the date of his termination. No evidence to the contrary has been led by the petitioner to show that he had completed 240 days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

14. The learned counsel for the petitioner next contended that the respondents had retained the juniors namely Nek Chand, Om Prakash, Tej Ram and Sita Devi who are still working and besides this even fresh persons have been engaged by the respondents as such the respondents had violated the provisions of section 25-G & 25-H of the Act. However, in his evidence by way of affidavit RW-1 categorically stated that Nek Chand, Om Prakash and Tej Ram were engaged on work in compliance to the award passed by the Labour Court and no violation has been committed by the respondents in any manner with regard to the disengagement of the petitioner. Further in cross-examination, he categorically denied the suggestion that Nek Chand, Om Prakash and Tej Ram were juniors to the petitioner. He further deposed in cross-examination that Sita Devi was engaged on compassionate grounds. No evidence to the contrary has been led by the petitioner in order to show that Nek Ram, Om Prakash and Tej Ram were not engaged on the orders of the Court and Sita Devi was not engaged on compassionate grounds. No benefit can be derived by the petitioner from the seniority list mark PX and mark PY as the same have not been proved in accordance with law. No record has been summoned/produced by the petitioner in order to prove the aforesaid seniority lists. In fact, no cogent and satisfactory evidence has been led by the petitioner which could go to show that the respondents have retained the persons junior to him as per their own orders and not upon the orders of the Court and had also engaged fresh hands. Hence, in the absence of any cogent and satisfactory evidence on record, the case of the petitioner does not fall under section 25-G and 25-H of the Act.

15. Thus, in view of my foregoing discussion, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 1.3.2016 by the respondents is not illegal and unjustified. Accordingly, issue No.1 is decided in favour of the respondents and against the petitioner.

Issue No. 2:

16. Since, the petitioner has failed to prove issue No.1 above, this issue becomes redundant.

Issue No. 3:

17. In support of this issue, no evidence has been led by the respondents which could go to show as to how the present petition is not maintainable especially when the petitioner has filed the present petition pursuant to the reference sent by the appropriate government to this Court for adjudication and I find nothing wrong with the present petition which is perfectly maintainable. Therefore, in the absence of any evidence on record, it cannot be said the petition is not maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Issue No. 4:

18. During the course of arguments, this issue was not pressed by the learned ADA for respondents, hence, the same is decided in favour of the petitioner and against the respondents.

Relief:

As a sequel to my above discussion and findings on issues No.1 to 4, the claim of the petitioner fails and is hereby dismissed with the result the reference is answered in favour of the respondents and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 20th day of June, 2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Ref. No. : 105 of 2017
Instituted on: 3-7-2017
Decided on: 20-6-2018

Gagan Thakur s/o Shri Chuni Lal, r/o Village Began, Post Office Chaba, Tehsil Sunni, District Shimla, H.P. ..*Petitioner.*

Vs.

1. The Divisional Forest Officer, Forest Division, Shimla, Mist Chamber Shimla District Shimla, H.P.

2. The Range Officer, Forest Range Sunni, Tehsil Sunni, District Shimla, H.P.
..*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ajay Shandil, Advocate

For respondents : Shri Mahinder Singh, ADA

AWARD

The following reference has been received from appropriate government by this court for adjudication:—

"Whether the termination of the services of Shri Gagan Thakur s/o Shri Chuni Lal, r/o Village Began, Post Office Chaba, Tehsil Sunni, District Shimla (H.P.) *w.e.f.* 1.3.2016 by the Divisional Forest Officer, Forest Division Shimla H.P. allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back-wages, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. Briefly, the case of the petitioner is that initially he was engaged as daily rated beldar *w.e.f.* 1.1.2004 with the respondents and he was asked to work at Forest Range Sunni, Forest Division Shimla and since the date of his engagement, the petitioner had discharged his duties as assigned to him with full sincerity, honesty, devotion, missionary-zeal as well as to the entire satisfaction of his superiors and there has been no complaint against him. It is further stated that the petitioner had worked with the respondents till 29.2.2016 and thereafter his services were orally terminated by the respondents without giving any notice or assigning any reason and even the respondents are giving artificial/fictional breaks willfully in order to deprive his status of permanent workman. That the employer is in the habit of not issuing muster-roll and taking the work on bill basis and had not marked the presence on muster-roll and from the date of his engagement the petitioner had worked continuously and had completed 240 days in each calendar year and also preceding to the date of his oral and illegal termination but neither any notice under section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) was given to the petitioner nor he was paid compensation. It is also stated that the regular work is available in Sunni Range and even the respondents have retained number of juniors in service whereas the services of the petitioner were terminated in violation of the principles of *audi alteram partem* as no opportunity of being heard had been afforded to him. Against this back-drop it has been prayed that the petitioner be ordered to be re-engaged in service at the same place and post and vicinity in which he was working prior to his illegal termination and the respondents be directed not to give artificial or fictional breaks and also issue muster-roll to the petitioner. It has further been prayed that the petitioner be granted permanent status by counting daily wage service as per the policy of the Government issued from time to time by condoning the artificial or fictional breaks for the purpose of 240 days.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability and delay and latches. On merits, it has been asserted that the petitioner was initially engaged during the year 2004 to carry out the seasonal forestry works in Bhajji Range of Shimla Forest Division and he had completed 240 days in the years 2006 and 2007 and thereafter he had left the work and never completed 240 days in any calendar year. That no artificial /fictional breaks were given to the petitioner by the respondents and he is still working in Bhajji Range on bill basis as per latest instructions of the Government/Department. It is further asserted that the petitioner had worked from 2005 to 2011 on muster-roll basis but he did not complete 240 days in any calendar year except the year 2006 & 2007 and thereafter he was engaged on bill basis and since the services of the petitioner were never terminated by the respondents, hence, the question of giving notice under section 25 of the Act does not arise and as far as the engagement of his juniors is concerned, the persons namely Nek Chand, Om Prakash, Tej Ram were engaged on work in compliance to award passed by this Court, hence,

no violation has been committed by the respondents department in any manner with regard to disengagement of petitioner. The respondents prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondents.

5. On the pleadings of the parties, the following issues were framed:—

(1) Whether the termination of the services of the petitioner by the respondents *w.e.f.* 1.3.2016 without complying with the provisions of Industrial Disputes Act, 1947 is illegalandunjustified*?* ..*OPP.*

(2) If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? ..*OPP.*

(3) Whether the petition is not maintainable as alleged? ..*OPR.*

(4) Whether the petition is hit by delay and latches as alleged? ..*OPR.*

(5) Relief.

6. I have heard the learned counsel for the petitioner and Ld. ADA for respondents and also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under:—

Issue No. 1	: No
Issue No. 2	: Becomes redundant
Issue No. 3	: No
Issue No. 4	:Not pressed
Relief	: Reference answered in favour of the respondents and against the petitioner per operative part of award.

REASONS FOR FINDINGS

Issues No. 1:

8. The case of the petitioner is that he had completed 240 days in each calendar year and his services had been terminated by the respondents illegally without complying with the provisions of section 25-F of the Act. He further contended that the respondents are giving artificial/fictional breaks willfully in order to deprive the status of permanent workman to petitioner. He also contended the juniors to the petitioner are still working with the respondents in violation of the provisions of sections 25-G & 25-H of the Act.

9. On the other hand, the learned ADA contended that the petitioner was engaged as seasonal forest worker and his services were never terminated by the respondents who is still working with the department on bill basis. He further contended that the petitioner had never completed 240 days in preceding twelve calendar months and his juniors have been engaged on the basis of award passed by this Court.

10. To prove his case, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as made in the

claim petition. He also tendered in evidence the copies of seniority list Mark PX. In cross-examination, he denied that he had not completed 240 days for eight years continuously. He admitted that he is still working with the department. He denied that no artificial breaks were given to him by the department. He further denied that he was never terminated by the department. He also denied that no junior person was retained. He admitted that Nek Chand, Om Prakash and Tej Ram were engaged by the orders of Court. He further admitted that he is working on bill basis with the department after the year 2011.

11. PW-2 Shri Devi Singh, Deputy Ranger deposed that the name of the petitioner is reflected in the seniority list of daily wager of Bhajji Forest Range from the year 2004 till the year 2011. He further stated that as per the record, Sita Devi was engaged on 1.2.2009 in Bhajji Forest Range and the department does not maintain the record about the working days of the labourers on bill basis. In cross-examination, he admitted that at the time of engagement of Sita Devi the petitioner was also working with the department. He further admitted that no daily wager was engaged after the year 2009. He also admitted that the petitioner is still working with the department on bill basis. He further admitted that as per the record, the petitioner had not completed 240 days in any calendar year except the year 2006.

12. On the other hand, the respondents have examined one Shri Ramesh Chand, Range Forest Officer Bhajji Range as RW-1 who tendered in evidence his affidavit Ex. RW- 1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the copy of mandays chart Ex. RW-1/B. In cross-examination, he admitted that the petitioner was engaged as a daily rated beldar on 1.1.2004 and he worked till 29.2.2016. He volunteered that the petitioner worked on muster-roll basis till the year, 2011 and thereafter he had worked on bill basis. He denied that the petitioner had worked continuously till 2016. He admitted that no compensation was paid to the petitioner. He denied that artificial breaks were given to the petitioner. He further denied that the juniors to the petitioner have been retained. He admitted that Tej Ram, Om Prakash and Nek Chand are still working with the department, however, they have been retained as per the award of the Court. He denied that they are juniors to the petitioner. He further denied that the seniority is maintained at the division level. He stated that Sita Devi was engaged on 1.2.2009 as a daily wager on compassionate ground.

13. I have closely scrutinized the entire record of the case and after the closure scrutiny thereof it has become clear that the petitioner is still working with the respondents on bill basis. It has also become clear that the petitioner had worked with the respondents on the basis of muster roll *w.e.f.* 1.1.2004 and worked as such till the year 2011. The perusal of mandays chart Ex. RW-1/B goes to show that the petitioner had worked for 20 days in the year 2004, 169 days in the year 2005, 258 days in the year 2006, 247 days in the year 2007, 229 days in the year 2008, 196 days in the year 2009, 218 days in the year 2010 and 113 days in the year 2011. Thus, it is clear from the mandays chart Ex. RW-1/B, that the petitioner had completed 240 days only in the years 2006 & 2007 and he has failed to prove on record that he had worked for 240 days in preceding twelve months prior to his termination. In **2009 (120) FLR 1007 incase titled as Relip Nagarpalika** *Vs.* **Babuji Gabhaji Thakore and others,** the Hon'ble Supreme Court has held as under:—

> **"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."**

In **AIR 2006 S.C. 110 case titled as Surindernagar District Panchayat** *V/s* **Dayabhai Amar Singh,** the Hon'ble Supreme Court has held that:—

> **"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has**

worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."

A bare perusal of the extract of the judgments re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. The perusal of mandays chart Ex. RW-1/B shows that the petitioner had completed 240 days only in the years 2006 & 2007 and not in preceding twelve months from the date of his termination. No evidence to the contrary has been led by the petitioner to show that he had completed 240 days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

14. The learned counsel for the petitioner next contended that the respondents had retained the juniors namely Nek Chand, Om Prakash, Tej Ram and Sita Devi who are still working and besides this even fresh persons have been engaged by the respondents as such the respondents had violated the provisions of section 25-G & 25-H of the Act. However, in his evidence by way of affidavit RW-1 categorically stated that Nek Chand, Om Prakash and Tej Ram were engaged on work in compliance to the award passed by the Labour Court and no violation has been committed by the respondents in any manner with regard to the disengagement of the petitioner. Further in cross-examination, he categorically denied the suggestion that Nek Chand, Om Prakash and Tej Ram were juniors to the petitioner. He further deposed in cross-examination that Sita Devi was engaged on compassionate grounds. No evidence to the contrary has been led by the petitioner in order to show that Nek Ram, Om Prakash and Tej Ram were not engaged on the orders of the Court and Sita Devi was not engaged on compassionate grounds. No benefit can be derived by the petitioner from the seniority list mark PX as the same have not been proved in accordance with law. No record has been summoned/produced by the petitioner in order to prove the aforesaid seniority list. In fact, no cogent and satisfactory evidence has been led by the petitioner which could go to show that the respondents have retained the persons junior to him as per their own orders and not upon the orders of the Court and had also engaged fresh hands. Hence, in the absence of any cogent and satisfactory evidence on record, the case of the petitioner does not fall under section 25-G and 25-H of the Act.

15. Thus, in view of my foregoing discussion, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 1.3.2016 by the respondents is not illegal and unjustified. Accordingly, issue no.1 is decided in favour of the respondents and against the petitioner.

Issue No. 2:

16. Since, the petitioner has failed to prove issue No.1 above, this issue becomes redundant.

Issue No. 3:

17. In support of this issue, no evidence has been led by the respondents which could go to show as to how the present petition is not maintainable especially when the petitioner has filed the present petition pursuant to the reference sent by the appropriate government to this Court for adjudication and I find nothing wrong with the present petition which is perfectly maintainable.

Therefore, in the absence of any evidence on record, it cannot be said the petition is not maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Issue No. 4:

18. During the course of arguments, this issue was not pressed by the learned ADA for respondents, hence, the same is decided in favour of the petitioner and against the respondents.

Relief:

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner fails and is hereby dismissed with the result the reference is answered in favour of the respondents and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 20th day of June, 2018.

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Ref. No.: 104 of 2017
Instituted on: 3-7-2017
Decided on: 20-6-2018

Surender Singh s/o Shri Teka Ram, r/o Village Jandar, P.O Basantpur, Tehsil Sunni, District Shimla, H.P. ..*Petitioner.*

Vs.

(1) The Divisional Forest Officer, Forest Division, Shimla, Mist Chamber Shimla, District Shimla, H.P.

(2) The Range Officer, Forest Range Sunni, Tehsil Sunni, District Shimla, H.P.
Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Ajay Shandil, Advocate
For respondents : Shri Mahinder Singh, ADA

AWARD

The following reference has been received from appropriate government by this court for adjudication:—

"Whether the termination of the services of Shri Surender Singh s/o Shri Teka Ram, r/o Village Jandar, P.O Basantpur, Tehsil Sunni, District Shimla (H.P.) *w.e.f.* 1.3.2016

by the Divisional Forest Officer, Forest Division Shimla H.P. allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back-wages, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. Briefly, the case of the petitioner is that initially he was engaged as daily rated beldar *w.e.f.* 11.1.2005 with the respondents and he was asked to work at Forest Range Sunni, Forest Division Shimla and since the date of his engagement, the petitioner had discharged his duties as assigned to him with full sincerity, honesty, devotion, missionary-zeal as well as to the entire satisfaction of his superiors and there has been no complaint against him. It is further stated that the petitioner had worked with the respondents till 29.2.2016 and thereafter his services were orally terminated by the respondents without giving any notice or assigning any reason and even the respondents are giving artificial/fictional breaks willfully in order to deprive his status of permanent workman. That the employer is in the habit of not issuing muster-roll and taking the work on bill basis and had not marked the presence on muster-roll and from the date of his engagement the petitioner had worked continuously and had completed 240 days in each calendar year and also preceding to the date of his oral and illegal termination but neither any notice under section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) was given to the petitioner nor he was paid compensation. It is also stated that the regular work is available in Sunni Range and even the respondents have retained number of juniors in service whereas the services of the petitioner were terminated in violation of the principles of *audi alteram partem* as no opportunity of being heard had been afforded to him. Against this back-drop it has been prayed that the petitioner be ordered to be re-engaged in service at the same place and post and vicinity in which he was working prior to his illegal termination and the respondents be directed not to give artificial or fictional breaks and also issue muster-roll to the petitioner. It has further been prayed that the petitioner be granted permanent status by counting daily wage service as per the policy of the Government issued from time to time by condoning the artificial or fictional breaks for the purpose of 240 days.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability and delay and latches. On merits, it has been asserted that the petitioner was initially engaged during the year 2005 to carry out the seasonal forestry works in Bhajji Range of Shimla Forest Division and he had completed 240 days in the year 2006 only and thereafter he used to come on work as per his suitability and except 2006, the petitioner never completed 240 days in any calendar year. That no artificial /fictional breaks were given to the petitioner by the respondents and he is still working in Bhajji Range on bill basis as per latest instructions of the Government/Department. It is further asserted that the petitioner had worked from 2005 to 2011 on muster roll basis but he did not complete 240 days in any calendar year except the year 2006 and thereafter he was engaged on bill basis and since the services of the petitioner were never terminated by the respondents, hence, the question of giving notice under section 25 of the Act does not arise and as far as the engagement of his juniors is concerned, the persons namely Nek Chand, Om Prakash, Tej Ram were engaged on work in compliance to award passed by this Court, hence, no violation has been committed by the respondents department in any manner with regard to disengagement of petitioner. The respondents prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondents.

5. On the pleadings of the parties, the following issues were framed:—

(1) Whether the termination of the services of the petitioner by the respondents *w.e.f.* 1.3.2016 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified? ..*OPP.*

(2) If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? ..*OPP.*

(3) Whether the petition is not maintainable as alleged? ..*OPR.*

(4) Whether the petition is hit by delay and latches as alleged? ..*OPR.*

(5) Relief

6. I have heard the learned counsel for the petitioner and Ld. ADA for respondents and also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1: No
Issue No. 2: Becomes redundant
Issue No. 3: No
Issue No. 4: Not pressed
Relief: Reference answered in favour of the respondents and against the petitioner per operative part of award.

REASONS FOR FINDINGS

Issues No. 1:

8. The case of the petitioner is that he had completed 240 days in each calendar year and his services had been terminated by the respondents illegally without complying with the provisions of section 25-F of the Act. He further contended that the respondents are giving artificial/fictional breaks willfully in order to deprive the status of permanent workman to petitioner. He also contended the juniors to the petitioner are still working with the respondents in violation of the provisions of sections 25-G & 25-H of the Act.

9. On the other hand, the learned ADA contended that the petitioner was engaged as seasonal forest worker and his services were never terminated by the respondents who is still working with the department on bill basis. He further contended that the petitioner had never completed 240 days in any calendar year except the year 2006 and his juniors have been engaged on the basis of award passed by this Court.

10. To prove his case, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as made in the claim petition. In cross-examination, he admitted that he was engaged in the year 2005 for seasonal work in Bhajji Sunni Forest Range. He denied that he had not completed 240 days for eight years continuously. He admitted that he is still working with the department. He denied that the department never gave him artificial breaks. He denied that no junior person was retained. He admitted that he is still working when the work is available.

11. PW-2 Shri Devi Singh, Deputy Ranger deposed that the name of the petitioner is reflected in the seniority list of daily wager of Bhajji Forest Range from the year 2005 till the year 2011. He further stated that as per the record, Sita Devi was engaged on 1.2.2009 in Bhajji Forest Range and the department does not maintain the record about the working days of the labourers on bill basis. In cross-examination, he admitted that at the time of engagement of Sita Devi the

petitioner was also working with the department. He further admitted that no daily wager was engaged after the year 2009. He also admitted that the petitioner is still working with the department on bill basis. He further admitted that as per the record, the petitioner had not completed 240 days in any calendar year except the year 2006.

12. On the other hand, the respondents have examined one Shri Ramesh Chand, Range Forest Officer Bhajji Range as RW-1 who tendered in evidence his affidavit Ex. RW- 1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the copy of mandays chart Ex. RW-1/B. In cross-examination, he admitted that the petitioner was engaged as a daily rated beldar on 1.1.2005 and he worked till 1.3.2016. He volunteered that the petitioner worked on muster-roll basis till the year 2011 and thereafter he had worked on bill basis. He denied that the petitioner had worked continuously till 2016. He admitted that no compensation was paid to the petitioner. He denied that artificial breaks were given to the petitioner. He further denied that the juniors to the petitioner have been retained. He admitted that Tej Ram, Om Prakash and Nek Chand are still working with the department, however, they have been retained as per the award of the Court. He denied that they are juniors to the petitioner. He further denied that the seniority is maintained at the division level. He stated that Sita Devi was engaged on 1.2.2009 as a daily wager on compassionate ground.

13. I have closely scrutinized the entire record of the case and after the closure scrutiny thereof it has become clear that the petitioner is still working with the respondents on bill basis. It has also become clear that the petitioner had worked with the respondents on the basis of muster roll *w.e.f.* the year 2005 and worked as such till the year 2011. The perusal of mandays chart Ex. PW-1/B goes to show that the petitioner had worked for 105 days in the year 2005, 245 days in the year 2006, 184 days in the year 2007, 165 days in the year 2008, 181 days in the year 2009, 224 days in the year 2010 and 111 days in the year 2011. Thus, it is clear from the mandays chart Ex. PW-1/B, that the petitioner had completed 245 days only in the year 2006 and he has failed to prove on record that he had worked for 240 days in preceding twelve months prior to his termination. In **2009 (120) FLR 1007 incase titled as Relip Nagarpalika** Vs. **Babuji Gabhaji Thakore and others,** the Hon'ble Supreme Court has held as under:—

> **"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."**

In **AIR 2006 S.C. 110 case titled as Surindernagar District Panchayat** V/s **Dayabhai Amar Singh,** the Hon'ble Supreme Court has held that:—

> **"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."**

A bare perusal of the extract of the judgments re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. The perusal of mandays chart Ex. PW-1/B shows that the petitioner had completed 240 days only in the year 2006 and not

in preceding twelve months from the date of his termination. No evidence to the contrary has been led by the petitioner to show that he had completed 240 days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

14. The learned counsel for the petitioner next contended that the respondents had retained the juniors namely Nek Chand, Om Prakash, Tej Ram and Sita Devi who are still working and besides this even fresh persons have been engaged by the respondents as such the respondents had violated the provisions of section 25-G & 25-H of the Act. However, in his evidence by way of affidavit RW-1 categorically stated that Nek Chand, Om Prakash and Tej Ram were engaged on work in compliance to the award passed by the Labour Court and no violation has been committed by the respondents in any manner with regard to the disengagement of the petitioner. Further in cross-examination, he categorically denied the suggestion that Nek Chand, Om Prakash and Tej Ram were juniors to the petitioner. He further deposed in cross-examination that Sita Devi was engaged on compassionate grounds. No evidence to the contrary has been led by the petitioner in order to show that Nek Ram, Om Prakash and Tej Ram were not engaged on the orders of the Court and Sita Devi was not engaged on compassionate grounds. In fact, no cogent and satisfactory evidence has been led by the petitioner which could go to show that the respondents have retained the persons junior to him as per their own orders and not upon the orders of the Court and had also engaged fresh hands. Hence, in the absence of any cogent and satisfactory evidence on record, the case of the petitioner does not fall under section 25-G and 25-H of the Act.

15. Thus, in view of my foregoing discussion, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 1.3.2016 by the respondents is not illegal and unjustified. Accordingly, issue no.1 is decided in favour of the respondents and against the petitioner.

Issue No. 2:

16. Since, the petitioner has failed to prove issue No.1 above, this issue becomes redundant.

Issue No. 3:

17. In support of this issue, no evidence has been led by the respondents which could go to show as to how the present petition is not maintainable especially when the petitioner has filed the present petition pursuant to the reference sent by the appropriate government to this Court for adjudication and I find nothing wrong with the present petition which is perfectly maintainable. Therefore, in the absence of any evidence on record, it cannot be said the petition is not maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents

.

Issue No. 4:

18. During the course of arguments, this issue was not pressed by the learned ADA for respondents, hence, the same is decided in favour of the petitioner and against the respondents.

Relief:

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner fails and is hereby dismissed with the result the reference is answered in favour of the

respondents and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 20th day of June, 2018.

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Ref. No.: 109 of 2017
Instituted on: 10-7-2017
Decided on: 20-6-2018

Besar Dass s/o Shri Charan Dass, r/o Village Mandap, P.O Karyali, Tehsil Sunni, District Shimla, H.P. ..*Petitioner.*

Vs.

1. The Divisional Forest Officer, Forest Division, Shimla, Mist Chamber Shimla, District Shimla, H.P.

2. The Range Officer, Forest Range Sunni, Tehsil Sunni, District Shimla, H.P.
..*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ajay Shandil, Advocate
For respondents: Shri Mahinder Singh, ADA

AWARD

The following reference has been received from appropriate government by this court for adjudication:—

"Whether the termination of the services of Shri Besar Dass s/o Shri Charan Dass, r/o Village Mandap, P.O Karyali, Tehsil Sunni, District Shimla (H.P.) *w.e.f.* 1.3.2016 by the Divisional Forest Officer, Forest Division Shimla H.P. allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back-wages, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. Briefly, the case of the petitioner is that initially he was engaged as daily rated beldar *w.e.f.* 3.11.2005 with the respondents and he was asked to work at Forest Range Sunni, Forest Division Shimla and since the date of his engagement, the petitioner had discharged his duties as

assigned to him with full sincerity, honesty, devotion, missionary-zeal as well as to the entire satisfaction of his superiors and there has been no complaint against him. It is further stated that the petitioner had worked with the respondents till 29.2.2016 and thereafter his services were orally terminated by the respondents without giving any notice or assigning any reason and even the respondents are giving artificial/fictional breaks willfully in order to deprive his status of permanent workman. That the employer is in the habit of not issuing muster-roll and taking the work on bill basis and had not marked the presence on muster-roll and from the date of his engagement the petitioner had worked continuously and had completed 240 days in each calendar year and also preceding to the date of his oral and illegal termination but neither any notice under section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) was given to the petitioner nor he was paid compensation. It is also stated that the regular work is available in Sunni Range and even the respondents have retained number of juniors in service whereas the services of the petitioner were terminated in violation of the principles of *audi alteram partem* as no opportunity of being heard had been afforded to him. Against this back-drop it has been prayed that the petitioner be ordered to be re-engaged in service at the same place and post and vicinity in which he was working prior to his illegal termination and the respondents be directed not to give artificial or fictional breaks and also issue muster-roll to the petitioner. It has further been prayed that the petitioner be granted permanent status by counting daily wage service as per the policy of the Government issued from time to time by condoning the artificial or fictional breaks for the purpose of 240 days.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability and delay and latches. On merits, it has been asserted that the petitioner was initially engaged during the year 2006 to carry out the seasonal forestry works in Bhajji Range of Shimla Forest Division and he had not completed 240 days in any calendar year and thereafter he left the work and he used to come on work as per his suitability. That no artificial /fictional breaks were given to the petitioner by the respondents and he is still working in Bhajji Range on bill basis as per latest instructions of the Government/Department. It is further asserted that the petitioner had worked from 2006 to 2011 on muster-roll basis but he did not complete 240 days in any calendar year and thereafter he was engaged on bill basis and since the services of the petitioner were never terminated by the respondents, hence, the question of giving notice under section 25 of the Act does not arise and as far as the engagement of his juniors is concerned, the persons namely Nek Chand, Om Prakash, Tej Ram were engaged on work in compliance to award passed by this Court, hence, no violation has been committed by the respondents department in any manner with regard to disengagement of petitioner. The respondents prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondents.

5. On the pleadings of the parties, the following issues were framed:—

(1) Whether the termination of the services of the petitioner by the respondents *w.e.f.* 1.3.2016 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified? ..*OPP.*

(2) If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? ..*OPP.*

(3) Whether the petition is not maintainable as alleged? ..*OPR.*

(4) Whether the petition is hit by delay and latches as alleged? ..*OPR.*

(5) Relief

6. I have heard the learned counsel for the petitioner and Ld. ADA for respondents and also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under:—

Issue No. 1:	No
Issue No. 2:	Becomes redundant
Issue No. 3:	No
Issue No. 4:	Not pressed
Relief:	Reference answered in favour of the respondents and against the petitioner per operative part of award.

REASONS FOR FINDINGS

Issues No. 1:

8. The case of the petitioner is that he had completed 240 days in each calendar year and his services had been terminated by the respondents illegally without complying with the provisions of section 25-F of the Act. He further contended that the respondents are giving artificial/fictional breaks willfully in order to deprive the status of permanent workman to petitioner. He also contended the juniors to the petitioner are still working with the respondents in violation of the provisions of sections 25-G & 25-H of the Act.

9. On the other hand, the learned ADA contended that the petitioner was engaged as seasonal forest worker and his services were never terminated by the respondents who is still working with the department on bill basis. He further contended that the petitioner had never completed 240 days in any calendar year and his juniors have been engaged on the basis of award passed by this Court.

10. To prove his case, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as made in the claim petition. He also tendered in evidence the copy of seniority list Mark PX. In cross-examination, he denied that he had never completed 240 days in any calendar year. He admitted that he had worked on muster-roll basis from the year 2006 to the year 2011 and thereafter he is working on bill basis till date. He denied that no artificial breaks were given to him. He further denied that he was never terminated by the department. He also denied that no junior was engaged.

11. PW-2 Shri Devi Singh, Deputy Ranger deposed that the name of the petitioner is reflected in the seniority list of daily wager of Bhajji Forest Range from the year 2006 till the year 2011. He further stated that as per the record, Sita Devi was engaged on 1.2.2009 in Bhajji Forest Range and the department does not maintain the record about the working days of the labourers on bill basis. In cross-examination, he admitted that at the time of engagement of Sita Devi the petitioner was also working with the department. He further admitted that no daily wager was engaged after the year 2009. He also admitted that the petitioner is still working with the department on bill basis. He further admitted that as per the record, the petitioner had not completed 240 days in any calendar year.

12. On the other hand, the respondents have examined one Shri Ramesh Chand, Range Forest Officer Bhajji Range as RW-1 who tendered in evidence his affidavit Ex. RW-1/A wherein

he reiterated almost all the averments as made in the reply. He also tendered in evidence the copy of mandays chart Ex. RW-1/B. In cross-examination, he stated that the petitioner was engaged on 11.7.2006 and he worked till 1.3.2016. He volunteered that the petitioner worked on muster-roll basis till the year, 2011 and thereafter he had worked on bill basis. He denied that the petitioner had worked continuously till 2016. He admitted that no compensation was paid to the petitioner. He denied that artificial breaks were given to the petitioner. He further denied that the juniors to the petitioner have been retained. He admitted that Tej Ram, Om Prakash and Nek Chand are still working with the department, however, they have been retained as per the award of the Court. He denied that they are juniors to the petitioner. He further denied that the seniority is maintained at the division level. He stated that Sita Devi was engaged on 1.2.2009 as a daily wager on compassionate ground.

13. I have closely scrutinized the entire record of the case and after the closure scrutiny thereof it has become clear that the petitioner is still working with the respondents on bill basis. It has also become clear that the petitioner had worked with the respondents on the basis of muster roll *w.e.f.* 11.7.2006 and worked as such till the year 2011. The perusal of mandays chart Ex. PW-1/B goes to show that the petitioner had worked for 10 days in the year, 2006 71 days in the year 2009, 203 days in the year, 2010 and 35 days in the year 2011. Thus, it is clear from the mandays chart Ex. PW-1/B, that the petitioner had not completed 240 days in any calendar year and he has failed to prove on record that he had worked for 240 days in preceding twelve months prior to his termination. In **2009 (120) FLR 1007 incase titled as Relip Nagarpalika** Vs. **Babuji Gabhaji Thakore and others,** the Hon'ble Supreme Court has held as under:—

> **"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."**

In **AIR 2006 S.C. 110 case titled as Surindernagar District Panchayat** V/s **Dayabhai Amar Singh,** the Hon'ble Supreme Court has held that:—

> **"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."**

A bare perusal of the extract of the judgments re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. The perusal of mandays chart Ex. PW-1/B shows that the petitioner had not completed 240 days in any calendar year and in preceding twelve months from the date of his termination. No evidence to the contrary has been led by the petitioner to show that he had completed 240 days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

14. The learned counsel for the petitioner next contended that the respondents had retained the juniors namely Nek Chand, Om Prakash, Tej Ram and Sita Devi who are still working and besides this even fresh persons have been engaged by the respondents as such the respondents

had violated the provisions of section 25-G & 25-H of the Act. However, in his evidence by way of affidavit RW-1 categorically stated that Nek Chand, Om Prakash and Tej Ram were engaged on work in compliance to the award passed by the Labour Court and no violation has been committed by the respondents in any manner with regard to the disengagement of the petitioner. Further in cross-examination, he categorically denied the suggestion that Nek Chand, Om Prakash and Tej Ram were juniors to the petitioner. He further deposed in cross-examination that Sita Devi was engaged on compassionate grounds. No evidence to the contrary has been led by the petitioner in order to show that Nek Ram, Om Prakash and Tej Ram were not engaged on the orders of the Court and Sita Devi was not engaged on compassionate grounds. No benefit can be derived by the petitioner from the seniority list mark PX as the same has not been proved in accordance with law. No record has been summoned/produced by the petitioner in order to prove the aforesaid seniority list. In fact, no cogent and satisfactory evidence has been led by the petitioner which could go to show that the respondents have retained the persons junior to him as per their own orders and not upon the orders of the Court and had also engaged fresh hands. Hence, in the absence of any cogent and satisfactory evidence on record, the case of the petitioner does not fall under section 25-G and 25-H of the Act.

15. Thus, in view of my foregoing discussion, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 1.3.2016 by the respondents is not illegal and unjustified. Accordingly, issue no.1 is decided in favour of the respondents and against the petitioner.

Issue No. 2:

16. Since, the petitioner has failed to prove issue No.1 above, this issue becomes redundant.

Issue No. 3:

17. In support of this issue, no evidence has been led by the respondents which could go to show as to how the present petition is not maintainable especially when the petitioner has filed the present petition pursuant to the reference sent by the appropriate government to this Court for adjudication and I find nothing wrong with the present petition which is perfectly maintainable. Therefore, in the absence of any evidence on record, it cannot be said the petition is not maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Issue No. 4:

18. During the course of arguments, this issue was not pressed by the learned ADA for respondents, hence, the same is decided in favour of the petitioner and against the respondents.

Relief:

As a sequel to my above discussion and findings on issues No.1 to 4, the claim of the petitioner fails and is hereby dismissed with the result the reference is answered in favour of the respondents and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 20th day of June, 2018.

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Ref. No.: 110 of 2017
Instituted on: 10-7-2017
Decided on: 20-6-2018

Ram Singh s/o Shri Bhagat Ram, r/o Village Panhera, Post Office Chaba, Tehsil Sunni, District Shimla, H.P. ..*Petitioner.*

Vs.

(1) The Divisional Forest Officer, Forest Division, Shimla, Mist Chamber Shimla, District Shimla, H.P.

(2) The Range Officer, Forest Range Sunni, Tehsil Sunni, District Shimla, H.P.
..*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ajay Shandil, Advocate
For respondents : Shri Mahinder Singh, ADA

AWARD

The following reference has been received from appropriate government by this court for adjudication:—

"Whether the termination of the services of Shri Ram Singh s/o Shri Bhagat Ram, r/o Village Panhera, P.O Chaba, Tehsil Sunni, District Shimla (H.P.) *w.e.f.* 1.3.2016 by the Divisional Forest Officer, Forest Division Shimla H.P. allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back-wages, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. Briefly, the case of the petitioner is that initially he was engaged as daily rated beldar *w.e.f.* 1.1.2004 with the respondents and he was asked to work at Forest Range Sunni, Forest Division Shimla and since the date of his engagement, the petitioner had discharged his duties as assigned to him with full sincerity, honesty, devotion, missionary-zeal as well as to the entire satisfaction of his superiors and there has been no complaint against him. It is further stated that the petitioner had worked with the respondents till 29.2.2016 and thereafter his services were orally terminated by the respondents without giving any notice or assigning any reason and even the respondents are giving artificial/fictional breaks willfully in order to deprive his status of permanent workman. That the employer is in the habit of not issuing muster-roll and taking the work on bill basis and had not marked the presence on muster-roll and from the date of his engagement the petitioner had worked continuously and had completed 240 days in each calendar year and also preceding to the date of his oral and illegal termination but neither any notice under section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) was given to the petitioner nor he was paid compensation. It is also stated that the regular work is available in Sunni Range and even the respondents have retained number of juniors in service whereas the services of the petitioner were terminated in violation of the principles of *audi alteram partem* as no

opportunity of being heard had been afforded to him. Against this back-drop it has been prayed that the petitioner be ordered to be re-engaged in service at the same place and post and vicinity in which he was working prior to his illegal termination and the respondents be directed not to give artificial or fictional breaks and also issue muster-roll to the petitioner. It has further been prayed that the petitioner be granted permanent status by counting daily wage service as per the policy of the Government issued from time to time by condoning the artificial or fictional breaks for the purpose of 240 days.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability and delay and latches. On merits, it has been asserted that the petitioner was initially engaged during the year 2004 to carry out seasonal forestry works in Bhajji Range of Shimla Forest Division and he had completed 240 days in the years, 2006 to 2008 & 2010 and thereafter he used to come on work as per his suitability and except for the years 2006 to 2008 and 2010, the petitioner had never completed 240 days in any calendar year. That no artificial/fictional breaks were given to the petitioner by the respondents and he is still working in Bhajji Range on bill basis as per latest instructions of the Government/Department. It is further asserted that the petitioner had worked from 2005 to 2011 on muster-roll basis but he did not complete 240 days in any calendar year except the years, 2006 to 2008 and 2010 and thereafter he was engaged on bill basis and since the services of the petitioner were never terminated by the respondents, hence, the question of giving notice under section 25 of the Act does not arise and as far as the engagement of his juniors is concerned, the persons namely Nek Chand, Om Prakash, Tej Ram were engaged on work in compliance to award passed by this Court, hence, no violation has been committed by the respondents department in any manner with regard to disengagement of petitioner. The respondents prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondents.

5. On the pleadings of the parties, the following issues were framed:—

(1) Whether the termination of the services of the petitioner by the respondents *w.e.f.* 1.3.2016 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified? ..*OPP.*

(2) If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? ..*OPP.*

(3) Whether the petition is not maintainable as alleged? ..*OPR.*

(4) Whether the petition is hit by delay and latches as alleged? ..*OPR.*

(5) Relief

6. I have heard the learned counsel for the petitioner and Ld. ADA for respondents and also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under:—

Issue No. 1: No.
Issue No. 2: Becomes redundant.

Issue No. 3 : No.
Issue No. 4: Not pressed.
Relief: Reference answered in favour of the respondents and agains the petitioner per operative part of award.

REASONS FOR FINDINGS

Issues No. 1:

8. The case of the petitioner is that he had completed 240 days in each calendar year and his services had been terminated by the respondents illegally without complying with the provisions of section 25-F of the Act. He further contended that the respondents are giving artificial/fictional breaks willfully in order to deprive the status of permanent workman to petitioner. He also contended the juniors to the petitioner are still working with the respondents in violation of the provisions of sections 25-G & 25-H of the Act.

9. On the other hand, the learned ADA contended that the petitioner was engaged as seasonal forest worker and his services were never terminated by the respondents who is still working with the department on bill basis. He further contended that the petitioner had never completed 240 days in preceding twelve calendar months and his juniors have been engaged on the basis of award passed by this Court.

10. To prove his case, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as made in the claim petition. He also tendered in evidence the copies of seniority list Mark PX. In cross-examination, he denied that he had not completed 240 days for eight years continuously. He admitted that he is still working with the department. He denied that no artificial breaks were given to him by the department. He further denied that he was never terminated by the department. He also denied that no junior person was retained. He admitted that Nek Chand, Om Prakash and Tej Ram were engaged by the orders of Court. He further admitted that he is working on bill basis with the department after the year 2011.

11. PW-2 Shri Devi Singh, Deputy Ranger deposed that the name of the petitioner is reflected in the seniority list of daily wager of Bhajji Forest Range from the year 2004 till the year 2011. He further stated that as per the record, Sita Devi was engaged on 1.2.2009 in Bhajji Forest Range and the department does not maintain the ercord about the working days of the labourers on bill basis. In cross-examination, he admitted that at the time of engagement of Sita Devi the petitioner was also working with the department. He further admitted that no daily wager was engaged after the year 2009. He also admitted that the petitioner is still working with the department on bill basis. He further admitted that as per the record, the petitioner had not completed 240 days in any calendar year except the year 2006.

12. On the other hand, the respondents have examined one Shri Ramesh Chand, Range Forest Officer Bhajji Range as RW-1 who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the copy of mandays chart Ex. RW-1/B. In cross-examination, he admitted that the petitioner was engaged as a daily rated beldar on 1.1.2004 and he worked till 29.2.2016. He volunteered that the petitioner worked on muster-roll basis till the year 2011 and thereafter he had worked on bill basis. He denied that the petitioner had worked continuously till 2016. He admitted that no compensation was paid to the petitioner. He denied that artificial breaks were given to the petitioner. He further denied that the juniors to the petitioner have been retained. He admitted that Tej Ram, Om Prakash and Nek Chand are still working with the department, however, they have been retained as per the award of

the Court. He denied that they are juniors to the petitioner. He further denied that the seniority is maintained at the division level. He stated that Sita Devi was engaged on 1.2.2009 as a daily wager on compassionate ground.

13. I have closely scrutinized the entire record of the case and after the closure scrutiny thereof it has become clear that the petitioner is still working with the respondents on bill basis. It has also become clear that the petitioner had worked with the respondents on the basis of muster roll *w.e.f.* 1.1.2004 and worked as such till the year 2011. The perusal of mandays chart Ex. RW-1/B goes to show that the petitioner had worked for 71 days in the year 2004, 205 days in the year 2005, 271 days in the year 2006, 256 days in the year 2007, 244 days in the year 2008, 211 days in the year 2009, 257 days in the year 2010 and 113 days in the year 2011. Thus, it is clear from the mandays chart Ex. RW-1/B, that the petitioner had completed 240 days only in the years 2006, 2007, 2008 and 2010 and he has failed to prove on record that he had worked for 240 days in preceding twelve months prior to his termination. In **2009 (120) FLR 1007 incase titled as Relip Nagarpalika** *Vs.* **Babuji Gabhaji Thakore and others,** the Hon'ble Supreme Court has held as under:—

> **"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."**

In **AIR 2006 S.C. 110 case titled as Surindernagar District Panchayat** V/s **Dayabhai Amar Singh,** the Hon'ble Supreme Court has held that:—

> **"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."**

A bare perusal of the extract of the judgments re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. The perusal of mandays chart Ex. PW-1/B shows that the petitioner had completed 240 days only in the years 2006 to 2008 and 2010 and not in preceding twelve months from the date of his termination. No evidence to the contrary has been led by the petitioner to show that he had completed 240 days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

14. The learned counsel for the petitioner next contended that the respondents had retained the juniors namely Nek Chand, Om Prakash, Tej Ram and Sita Devi who are still working and besides this even fresh persons have been engaged by the respondents as such the respondents had violated the provisions of section 25-G & 25-H of the Act. However, in his evidence by way of affidavit RW-1 categorically stated that Nek Chand, Om Prakash and Tej Ram were engaged on work in compliance to the award passed by the Labour Court and no violation has been committed by the respondents in any manner with regard to the disengagement of the petitioner. Further in cross-examination, he categorically denied the suggestion that Nek Chand, Om Prakash and Tej

Ram were juniors to the petitioner. He further deposed in cross-examination that Sita Devi was engaged on compassionate grounds. No evidence to the contrary has been led by the petitioner in order to show that Nek Ram, Om Prakash and Tej Ram were not engaged on the orders of the Court and Sita Devi was not engaged on compassionate grounds. No benefit can be derived by the petitioner from the seniority list mark PX as the same has not been proved in accordance with law. No record has been summoned/produced by the petitioner in order to prove the aforesaid seniority list. In fact, no cogent and satisfactory evidence has been led by the petitioner which could go to show that the respondents have retained the persons junior to him as per their own orders and not upon the orders of the Court and had also engaged fresh hands. Hence, in the absence of any cogent and satisfactory evidence on record, the case of the petitioner does not fall under section 25-G and 25-H of the Act.

15. Thus, in view of my foregoing discussion, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 1.3.2016 by the respondents is not illegal and unjustified. Accordingly, issue No.1 is decided in favour of the respondents and against the petitioner.

Issue No. 2:

16. Since, the petitioner has failed to prove issue No.1 above, this issue becomes redundant.

Issue No. 3:

17. In support of this issue, no evidence has been led by the respondents which could go to show as to how the present petition is not maintainable especially when the petitioner has filed the present petition pursuant to the reference sent by the appropriate government to this Court for adjudication and I find nothing wrong with the present petition which is perfectly maintainable. Therefore, in the absence of any evidence on record, it cannot be said the petition is not maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Issue No. 4:

18. During the course of arguments, this issue was not pressed by the learned ADA for respondents, hence, the same is decided in favour of the petitioner and against the respondents.

Relief:

As a sequel to my above discussion and findings on issues No.1 to 4, the claim of the petitioner fails and is hereby dismissed with the result the reference is answered in favour of the respondents and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 20th day of June, 2018.

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref. No.: 103 of 2017
Instituted on: 1-7-2017
Decided on: 20-6-2018

Yog Raj s/o Shri Khem Dass, r/o Village Jaishi, Post Office Bharara, Tehsil Sunni, District Shimla, H.P. ..*Petitioner.*

Vs.

(1) The Divisional Forest Officer, Forest Division, Shimla, Mist Chamber Shimla, District Shimla, H.P.

(2) The Range Officer, Forest Range Sunni, Tehsil Sunni, District Shimla, H.P.
..*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ajay Shandil, Advocate
For respondents : Shri Mahinder Singh, ADA

AWARD

The following reference has been received from appropriate government by this court for adjudication:—

"Whether the termination of the services of Shri Yog Raj s/o Shri Khem Dass, r/o Village Jaishi, Post Office Bharara, Tehsil Sunni, District Shimla (H.P.) *w.e.f.* 1.3.2016 by the Divisional Forest Officer, Forest Division Shimla HP allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back-wages, past service benefits and compensation the above ex-worker is entitled to from the above employer/management.?"

2. Briefly, the case of the petitioner is that initially he was engaged as daily rated beldar *w.e.f.* 1.6.2004 with the respondents and he was asked to work at Forest Range Sunni, Forest Division Shimla and since the date of his engagement, the petitioner had discharged his duties as assigned to him with full sincerity, honesty, devotion, missionary-zeal as well as to the entire satisfaction of his superiors and there has been no complaint against him. It is further stated that the petitioner had worked with the respondents till 29.2.2016 and thereafter his services were orally terminated by the respondents without giving any notice or assigning any reason and even the respondents are giving artificial/fictional breaks willfully in order to deprive his status of permanent workman. That the employer is in the habit of not issuing muster-roll and taking the work on bill basis and had not marked the presence on muster roll and from the date of his engagement the petitioner had worked continuously and had completed 240 days in each calendar year and also preceding to the date of his oral and illegal termination but neither any notice under section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) was given to the petitioner nor he was paid compensation. It is also stated that the regular work is available in Sunni Range and even the respondents have retained number of juniors in service whereas the services of the petitioner were terminated in violation of the principles of *audi alteram partem* as no

opportunity of being heard had been afforded to him. Against this back-drop it has been prayed that the petitioner be ordered to be re-engaged in service at the same place and post and vicinity in which he was working prior to his illegal termination and the respondents be directed not to give artificial or fictional breaks and also issue muster-roll to the petitioner. It has further been prayed that the petitioner be granted permanent status by counting daily wage service as per the policy of the Government issued from time to time by condoning the artificial or fictional breaks for the purpose of 240 days.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability and delay and latches. On merits, it has been asserted that the petitioner was initially engaged during the year 2004 to carry out the seasonal forestry works in Bhajji Range of Shimla Forest Division and he had completed 240 days in the years 2005 to 2007 and 2010 and thereafter he had left the job and never completed 240 days in any calendar year. That no artificial /fictional breaks were given to the petitioner by the respondents and he is still working in Bhajji Range on bill basis as per latest instructions of the Government/Department. It is further asserted that the petitioner had worked from 2005 to 2011 on muster-roll basis but he did not complete 240 days in any calendar year except the years 2005 to 2007 and 2010 and thereafter he was engaged on bill basis and since the services of the petitioner were never terminated by the respondents, hence, the question of giving notice under section 25 of the Act does not arise and as far as the engagement of his juniors is concerned, the persons namely Nek Chand, Om Prakash, Tej Ram were engaged on work in compliance to award passed by this Court, hence, no violation has been committed by the respondents department in any manner with regard to disengagement of petitioner. The respondents prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondents.

5. On the pleadings of the parties, the following issues were framed:—

(1) Whether the termination of the services of the petitioner by the respondents *w.e.f.* 1.3.2016 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified? ..*OPP.*

(2) If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? ..*OPP.*

(3) Whether the petition is not maintainable as alleged? ..*OPR.*

(4) Whether the petition is hit by delay and latches as alleged? ..*OPR.*

(5) Relief

6. I have heard the learned counsel for the petitioner and Ld. ADA for respondents and also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under:—

Issue No. 1 : No
Issue No. 2 : Becomes redundant
Issue No. 3 : No

Issue No. 4 : Not pressed
Relief : Reference answered in favour of the respondents and against the petitioner per operative part of award.

REASONS FOR FINDINGS.

Issues No. 1.

8. The case of the petitioner is that he had completed 240 days in each calendar year and his services had been terminated by the respondents illegally without complying with the provisions of section 25-F of the Act. He further contended that the respondents are giving artificial/fictional breaks willfully in order to deprive the status of permanent workman to petitioner. He also contended the juniors to the petitioner are still working with the respondents in violation of the provisions of sections 25-G & 25-H of the Act.

9. On the other hand, the learned ADA contended that the petitioner was engaged as seasonal forest worker and his services were never terminated by the respondents who is still working with the department on bill basis. He further contended that the petitioner had never completed 240 days in preceding twelve calendar months and his juniors have been engaged on the basis of award passed by this Court.

10. To prove his case, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as made in the claim petition. He also tendered in evidence the copies of seniority lists Mark PX and Mark PY. In cross-examination, he denied that he had not completed 240 days for a period of seven years continuously. He admitted that he had worked on muster-roll basis from the year 2004 to the year, 2011 and thereafter he is working on bill basis till date. He denied that no artificial breaks were given to him. He further denied that he was never terminated by the department. He also denied that no junior person was retained.

11. PW-2 Shri Devi Singh, Deputy Ranger deposed that the name of the petitioner is reflected in the seniority list of daily wager of Bhajji Forest Range from the year 2004 till the year 2011. He further stated that as per the record, Sita Devi was engaged on 1.2.2009 in Bhajji Forest Range and the department does not maintain the ercord about the working days of the labourers on bill basis. In cross-examination, he admitted that at the time of engagement of Sita Devi the petitioner was also working with the department. He further admitted that no daily wager was engaged after the year 2009. He also admitted that the petitioner is still working with the department on bill basis. He further admitted that as per the record, the petitioner had not completed 240 days in any calendar year except the year 2006.

12. On the other hand, the respondents have examined one Shri Ramesh Chand, Range Forest Officer Bhajji Range as RW-1 who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the copy of mandays chart Ex. RW-1/B. In cross-examination, he admitted that the petitioner was engaged as a daily rated beldar on 1.6.2004 and he worked till 29.2.2016. He volunteered that the petitioner worked on muster-roll basis till the year 2011 and thereafter he had worked on bill basis. He denied that the petitioner had worked continuously till 2016. He admitted that no compensation was paid to the petitioner. He denied that artificial breaks were given to the petitioner. He further denied that the juniors to the petitioner have been retained. He admitted that Tej Ram, Om Prakash and Nek Chand are still working with the department, however, they have been retained as per the award of the Court. He denied that they are juniors to the petitioner. He further denied that the seniority is maintained at the division level. He stated that Sita Devi was engaged on 1.2.2009 as a daily wager on compassionate ground.

13. I have closely scrutinized the entire record of the case and after the closure scrutiny thereof it has become clear that the petitioner is still working with the respondents on bill basis. It has also become clear that the petitioner had worked with the respondents on the basis of muster roll *w.e.f.* 1.1.2004 and worked as such till the year 2011. The perusal of mandays chart Ex. RW-1/B goes to show that the petitioner had worked for 114 days in the year 2004, 265 days in the year 2005, 244 days in the year 2006, 247 days in the year 2007, 230 days in the year 2008, 211 days in the year 2009, 255 days in the year 2010 and 113 days in the year 2011. Thus, it is clear from the mandays chart Ex. RW-1/B, that the petitioner had completed 240 days only in the years, 2005, 2006, 2007 and 2010 and he has failed to prove on record that he had worked for 240 days in preceding twelve months prior to his termination. In **2009 (120) FLR 1007 incase titled as Relip Nagarpalika** *Vs.* **Babuji Gabhaji Thakore and others,** the Hon'ble Supreme Court has held as under:—

> **"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."**

In AIR 2006 S.C. 110 case titled as Surindernagar District Panchayat *V/s* **Dayabhai Amar Singh,** the Hon'ble Supreme Court has held that:—

> **"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."**

A bare perusal of the extract of the judgments re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. The perusal of mandays chart Ex. RW-1/B shows that the petitioner had completed 240 days only in the years 2005 to 2007 and 2010 and not in preceding twelve months from the date of his termination. No evidence to the contrary has been led by the petitioner to show that he had completed 240 days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

14. The learned counsel for the petitioner next contended that the respondents had retained the juniors namely Nek Chand, Om Prakash, Tej Ram and Sita Devi who are still working and besides this even fresh persons have been engaged by the respondents as such the respondents had violated the provisions of section 25-G & 25-H of the Act. However, in his evidence by way of affidavit RW-1 categorically stated that Nek Chand, Om Prakash and Tej Ram were engaged on work in compliance to the award passed by the Labour Court and no violation has been committed by the respondents in any manner with regard to the disengagement of the petitioner. Further in cross-examination, he categorically denied the suggestion that Nek Chand, Om Prakash and Tej Ram were juniors to the petitioner. He further deposed in cross-examination that Sita Devi was engaged on compassionate grounds. No evidence to the contrary has been led by the petitioner in order to show that Nek Ram, Om Prakash and Tej Ram were not engaged on the orders of the Court and Sita Devi was not engaged on compassionate grounds. No benefit can be derived by the

petitioner from the seniority lists mark PX and mark PY as the same have not been proved in accordance with law. No record has been summoned/produced by the petitioner in order to prove the aforesaid seniority lists. In fact, no cogent and satisfactory evidence has been led by the petitioner which could go to show that the respondents have retained the persons junior to him as per their own orders and not upon the orders of the Court and had also engaged fresh hands. Hence, in the absence of any cogent and satisfactory evidence on record, the case of the petitioner does not fall under section 25-G and 25-H of the Act.

15. Thus, in view of my foregoing discussion, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 1.3.2016 by the respondents is not illegal and unjustified. Accordingly, issue No.1 is decided in favour of the respondents and against the petitioner.

Issue No. 2:

16. Since, the petitioner has failed to prove issue No. 1 above, this issue becomes redundant.

Issue No. 3:

17. In support of this issue, no evidence has been led by the respondents which could go to show as to how the present petition is not maintainable especially when the petitioner has filed the present petition pursuant to the reference sent by the appropriate government to this Court for adjudication and I find nothing wrong with the present petition which is perfectly maintainable. Therefore, in the absence of any evidence on record, it cannot be said the petition is not maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Issue No. 4:

18. During the course of arguments, this issue was not pressed by the learned ADA for respondents, hence, the same is decided in favour of the petitioner and against the respondents.

Relief:

As a sequel to my above discussion and findings on issues No.1 to 4, the claim of the petitioner fails and is hereby dismissed with the result the reference is answered in favour of the respondents and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 20th day of June, 2018.

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SHRI SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Ref. No.: 107 of 2016

Instituted on: 2-11-2016
Decided on: 4-6-2018

Shyama Nand s/o Shri Salmu Ram, r/o Village Bohrar, P.O. Anti, Tehsil Jubbal, District Shimla, H.P. ..*Petitioner.*

Vs.

The Executive Engineer, Division Rohru, Tehsil Rohru, District Shimla, H.P.
..*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri R.K. Khidtta, Advocate
For respondent : Shri Rajinder, Advocate vice Csl

AWARD

The reference for adjudication, sent by the appropriate government, is as under:—

"Whether alleged termination of services of Sh. Shyama Nand s/o Shri Salmu Ram, r/o Village Bohrar, P.O. Anti, Tehsil Jubbal, District Shimla, H.P. during May, 1995 by the Executive Engineer, HPSEB Ltd., Division Rohru, District Shimla, H.P. who had worked as beldar on daily wages only for 226 days during 1994-95 and has raised his industrial dispute after about 20 years, allegedly without complying with the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the working period of 226 days during 1994-95 and delay of about 20 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

2. Briefly, the case of the petitioner is that he was engaged as beldar by the respondent in the month of September, 1994 and worked as such till March, 1997 continuously and his services had been terminated without serving any notice and without payment of retrenchment compensation and without following the mandatory provisions of Industrial Disputes Act, 1947 (hereinafter referred to as Act) as well as the Standing Orders of the HPSEB and after his termination, he visited the office of respondent number of times for his re-engagement as the work was available with the board and even the junior persons to him namely Amrit Singh, Vipin, Geeta Ram and Smt. Sushila Kamta are working with the respondent but despite assurance given by the officials of the respondent, he was not called back in the job and due to the assurance given by the officials of the respondent the petitioner remained under impression that he would be called back in the job and could not file the demand notice earlier. That the petitioner was forced to file demand notice against his illegal termination but due to the adamant attitude of the respondent the conciliation proceedings failed. That the petitioner had worked with the board *w.e.f.* March, 1995 to March, 1997 and had completed 240 days in each calendar year and the services of his juniors namely Sushila Kamta have been regularized whereas his services have been terminated by the respondent without following the mandatory provisions of sections 25-F, 25-G and 25-H of the Act. Against this backdrop a prayer has been made that the termination order of the petitioner passed by the respondent be quashed and set aside and the respondent be directed to reinstate the petitioner in service on the same post *w.e.f.* 1.6.1995 with all the consequential service benefits including back-wages.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken that the claim petition is not maintainable on account of

non-joinder and mis-joinder of necessary party, that the claim petition is hopelessly time barred, that the petitioner has not approached this Court with clean hands and estoppel. On merits, it has been asserted that the petitioner was engaged on 26.9.1994 and worked as such with the respondent upto 25.5.1995 and he had never completed 240 days in each calendar year and his services were never terminated by the respondent who had left the job at his own sweet will and never turned up for work after 25.5.1995 and since he had not completed 240 days in each calendar year, hence, the petitioner is not entitled for any prior notice as required under the Act. It is further asserted that the petitioner had worked with the respondent for 226 days. It is denied that the petitioner was assured for re-engagement by the respondent board. It is asserted that no person junior to the petitioner has been retained or regularized except those who have approached the Labour Court as well as other Courts. It is further asserted that the petitioner has raised the present dispute after a gap of 22 years. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent.

5. On the pleadings of the parties, the following issues were framed on 28.4.2017.

(1) Whether the termination of the services of petitioner during May, 1995 by the respondent without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? ..*OPP.*

(2) If issue No.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? ..*OPP.*

(3) Whether the claim petition is time barred as alleged? ..*OPR.*

(4) Whether the claim petition is not maintainable as alleged? ..*OPR*

.

(5) Relief

6. I have heard the Learned Counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1 : No
Issue No. 2 : Becomes redundant
Issue No. 3: Yes
Issue No. 4 : No
Relief : Reference answered in favour of the respondent and against the petitioner per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 & 3:

8. Being interlinked and correlated, both these issues are taken up together for decision.

9. The Learned Counsel for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without serving him any notice as required under

section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that the junior persons to the petitioner are still working with the respondent department and fresh workers have been engaged in violation of the provisions of section 25-G and 25-H of the Act.

10. On the other hand, Learned Vice Csl. counsel for the respondent contended that the claim of the petitioner is highly belated and stale. He further contended that the services of the petitioner had never been terminated by the respondent who had left the job at his own and even he had not completed 240 days in any calendar year. He also contended that no junior to the petitioner had been retained and no fresh hands had been engaged by the respondent, hence, he is not entitled to any relief.

11. To prove issue No.1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence demand notice dated 11.3.2015 Ex. PW-1/B. In cross-examination, he admitted that he was engaged on muster roll basis on 26.9.1994 as beldar. He denied that he had worked till 25.5.1995. He admitted that he was engaged for a specific work. He denied that he had worked for 226 days in total. He further denied that he had not completed 240 days in any calendar year. He also denied that he had left the job at his own. He admitted that he raised the demand notice on 11.3.2015. He denied that no junior was retained by the board and no fresh hands were engaged.

12. PW-2 Ms. Sushila Kamta, Sub Station Attendant, Shimla deposed that she was engaged by the board as beldar on 20.7.1998 at Sub Division Rohru and she is still working with the board. In cross-examination, she denied that she was appointed in Electric Division Rampur on 26.7.1998.

13. Shri Hira Lal, Junior Engineer stepped into the witness box as PW-3 to depose that as per record Smt. Sushila Kamta was initially appointed as beldar in Electric Sub Division Rohru on 20.7.1998 and at present she is still working with the board. He also tendered in evidence the copy of information supplied under RTI Act to Shri Amrit Singh *vide* letter dated 30.11.2012 Ex. PW 3/A. In cross-examination he admitted that Rohru and Nogli are separate Sub Divisions.

14. PW-4 Shri Ajay Kumar Assistant Engineer, HPSEB Rohru deposed that as per the record Shri Amrit Singh was engaged as beldar at Electrical Sub Division Rohru on 30.1.1995 on daily wages, Puran Chand was engaged on 26.10.1992, Surinder Singh was engaged as beldar on 26.10.1986, Panna Lal was engaged as beldar on 26.10.1992, Goverdhan Singh was engaged as beldar on 26.11.1992 and petitioner was engaged as beldar on daily wages on 26.9.1994. In cross-examination, he admitted that the petitioner had not completed 240 days in any calendar year as per record brought by him. He stated that the petitioner had worked till 25.5.1995 for 226 days and no junior to him was retained except on the orders of the Court. He admitted that the petitioner had raised the demand notice after 20 years.

15. PW-5 Shri Prem Chand Sharma, Senior Assistant has stated that as per the record Shri Shayama Nand and Shishi Ram have filed OA No. 779/1997 Mark PX before the Administrative Tribunal Shimla and the department had filed the reply Mark P-1 to the same and the OA was decided *vide* order dated 20.10.2004 Mark PY. PW-6 Shri Ram Kumar, Senior Assistant HP Administrative Tribunal, Shimla has stated that the petitioner had filed an OA No. 779/1997 before the HP State Administrative Tribunal which was decided *vide* order dated 20.10.2004 Ex. PW-6/A. He further deposed that the petition filed by the petitioner alongwith Shishi Ram is Ex. PW-6/B and the copy of reply filed by the respondent to the OA is Ex. PW-6/C.

16. The respondent has examined one Shri Sanjeev Rawat, Senior Executive Engineer as RW-1, who deposed that the petitioner was engaged on 26.9.1994 as daily wages beldar on muster

roll basis and he worked as such till 25.5.1995 for 226 days and he had never completed 240 days in any calendar year. He further deposed that the board had retained junior person to the petitioner namely Amrit Singh upon the orders of the Court and the petitioner had raised the demand notice after 22 years. In cross-examination, he admitted that Sushila Kamta was engaged on 20.7.1998 at Sub Division Rohru. He further admitted that Amrit Singh was engaged on the basis of the award dated 3.1.2015 passed by this Court. He denied that the persons namely Vipin and Geeta Ram are juniors to the petitioner and they are still working. He further denied that the petitioner had completed 240 days in a calendar year. He also denied that the services of the petitioner were illegally terminated. He denied that there is no delay of 22 years in raising the demand notice.

17. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked only for 226 days as daily waged beldar with the respondent. Now, the question which arises for consideration before this Court is as to whether the reference is stale and highly belated. The Learned Counsel for the petitioner contended that under the Industrial Disputes, no limitation is prescribed and the provision of Article 137 of the Limitation Act 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. He further contended that the petitioner was earlier pursuing his remedy before the HP State Administrative Tribunal by filing an original application No. 779 of 1997 which was later on withdrawn by him on 21.10.2004 for want of jurisdiction and thereafter he raised the present industrial dispute.

18. As per the reference the petitioner was terminated during May, 1995 whereas the demand notice was raised by the petitioner on 11.3.2015 which fact has also admitted by him in cross-examination. Therefore, the position of law in respect of a stale claim is required to be seen. In **(2013) 14 SCC 543, titled as Assistant Engineer Rajasthan State Agriculture Marketing Board, Sub Division Kota *Vs.* Mohan Lal,** it has been held by the Hon'ble Apex Court that though the Limitation Act is not applicable to the reference made under the I.D. Act but delay in raising industrial Dispute is an important circumstance for exercise of judicial discretion in determining relief that is to be granted. The relevant portion of aforesaid judgment is reproduced as under:—

> "19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

19. In **Assistant Executive Engineer, Karnataka *Vs.* Shivalinga reported in (2002) 10 SCC 167,** the services of the employee were terminated on 25.5.1985 and he approached the Labour Officer on 17.3.1995 and then the reference was made by the Government to the Labour Court. There was a delay of more than nine years in approaching the Labour Officer. In para 6 of the aforesaid judgment, the Hon'ble Apex Court has held as under:—

> "Learned Counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned Counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *vs*. U.P. SEB (2001) 6 SCC 222 to contend that there is no period of

limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the Learned Counsel have no application to the case on hand."

Thus, it has been held that in case there is a serious dispute or doubt in such relationship and the records of the employer become relevant, the long delay would come in the way of maintenance of the same.

20. In **Haryana State Coop. Land Development Bank *Vs.* Neelam reported in (2005) 5 SCC 91,** the employee was discontinued from service *w.e.f.* 30.5.1986 and he raised the demand notice on 30.9.1993 and thereafter the reference was sent to the Labour court by the appropriate government. The Labour Court passed an order answering the reference against the employee holding that the claim was belated. Thereafter, a writ petition was filed before the Hon'ble High Court which was allowed and the employee was directed to be reinstated in service with continuity of service but without back-wages. The Hon'ble Supreme Court set aside the judgment of the High Court and restored the judgment of the Labour Court as a result the reference stood answered against the workman. The relevant portion of the aforesaid judgment is reproduced as under:—

13. "In Ajaib Singh (*supra*), the management did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. In that case, the Labour Court granted the relief, but the same was denied to the workman only by the High Court. The Court referred to the purport and object of enacting Industrial Disputes Act only with a view to find out as to whether the provisions of the Article 137 of the Schedule appended to the Limitation Act, 1963 are applicable or not. Although, the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in Ajaib Singh (*supra*), but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the appropriate Government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court."

14. **"The decision of Ajaib Singh (*supra*) must be held to have been rendered in the fact situation obtaining therein and no ratio of universal application can be culled out therefrom. A decision, as is well-known, is an authority of what it decides and not what can logically be deduced therefrom** Bharat Forge Co. Ltd. *Vs*. Uttam Manohar Nakate, JT 2005 (1) SC 303], and Kalyan Chandra Sarkar *vs.* Rajesh Ranjan @ Pappu Yadav & Anr. para 42."

15. In Balbir Singh vs. Punjab Roadways and Another [(2001) 1 SCC 133], as regard Ajaib Singh (*supra*), this Court observed :—

5. "The Learned Counsel for the petitioner strenuously urged that the Tribunal committed error in denying relief to the workman merely on the ground of delay. The

Learned Counsel submitted that in industrial dispute delay should not be taken as a ground for denying relief to the workman if the order/orders under challenge are found to be unsustainable in law. He placed reliance on the decision of this Court in the case of Ajaib Singh *vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. [(1999) 6 SCC 82 : 1999 SCC (L&S) 1054 : JT (1999) 3 SC 38].

6. "We have carefully considered the contentions raised by the Learned Counsel for the petitioner. We have also perused the aforementioned decision. We do not find that any general principle as contended by the Learned Counsel for the petitioner has been laid down in that decision. The decision was rendered on the facts and circumstances of the case, particularly the fact that the plea of delay was not taken by the management in the proceeding before the Tribunal. In the case on hand the plea of delay was raised and was accepted by the Tribunal. Therefore, the decision cited is of little help in the present case. Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially."

16. "Yet again in Assistant Executive Engineer, Karnataka vs. Shivalinga [(2002) 10 SCC 167], a Bench of this Court observed :—

"6. Learned Counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned Counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs*. Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases **where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale.** That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the Learned Counsel have no application to the case on hand."

17. "In Nedungadi Bank Ltd. (*supra*), a Bench of this Court, where S. Saghir Ahmad was a member [His Lordship was also a member in Ajaib Singh (*supra*) , opined :—

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. **As to when a**

dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made."

(Emphasis supplied).

21. In **(2006) 5 SCC 433 in case titled as UP State Road Transport Corporation** *Vs.* **Babu Ram**, the termination was dated 19.9.1983 and the reference was made on 29.8.1998. The Labour Court has held the termination as un-valid without considering the question of delay. The Hon'ble High Court dismissed the writ petition. The Hon'ble Supreme Court has held that no material was placed on record to show that the dispute was raised within reasonable time and the employee was not responsible for delay. The relevant portion of the aforesaid judgment is reproduced as under:—

"10. It is to be noted that the High Court has very cryptically disposed of the writ petition. The workman has not placed any material to show that it had raised dispute within a reasonable time, and/or that he was not responsible for delayed decision if any in the conciliation proceedings. It was for him to show that the dispute was raised within a reasonable time and that he was not responsible for any delay. The High Court, on a hypothetical basis has assumed that the dispute might have been raised promptly but delayed by the State Government and he cannot be penalized for delay in finalizing the conciliation proceedings and the reference. But neither the Labour Court nor the High Court has even noted the factual position. The conclusion was based on surmises and conjectures."

22. In Assistant Engineer, CAD Kota *Vs.* Dhan Kunwar reported in (2006) 5 SCC 481, the delay was of about eight years in raising the dispute. The Labour Court granted reinstatement with 30 % back-wages. The writ petition and writ appeal filed by the employer were dismissed. However, the Hon'ble Apex Court set aside the judgments of Hon'ble High Court and the Labour Court and held that no relief should have been granted. The relevant portion of the aforesaid judgment is reproduced herein under:—

"9. In the background of what has been stated above, the Labour Court should not have granted relief. Unfortunately, learned Single Judge and the Division Bench did not consider the issues in their proper perspective and arrived at abrupt conclusions without even indicating justifiable reasons……..

23. **In UP State Road Transport Corporation** *Vs.* **Ram Singh and another (2008) 17 SCC 627,** the termination was dated 15.3.1973 and the reference was dated 15.6.1986 and there was a delay of about 13 years in making the reference. The reference was dismissed on the ground of delay. The relevant portion of the aforesaid judgment reads as under:—

" 7. We are of the view that in the facts and circumstances of the case, the High Court erred in not setting aside the award of the Labour Court. Apart from the unacceptable manner in which the appellant was denied the opportunity of participating in the proceedings, including being debarred from cross-examining the respondent, the Labour Court could not have entertained the industrial dispute given the enormous delay. This Court has in several decisions has held that while delay cannot by itself be sufficient reason to reject an industrial dispute, never the less the delay cannot be unreasonable. The decision in Prakash Chander Sahu has reaffirmed this principal. The reason for diligence and

promptness lies in the fact that the records pertaining to an employee might have been destroyed and it would be difficult to obtain witnesses who would be competent to give evidence so many years later if the Labour Court wishes to hold a further enquiry into the matter. In the present case, the delay of 13 years is unreasonable. The mere fact that the respondent was making repeated representations would not justify his raising the issue before the Labour Court after 13 years. In any event, the last representation was made in 1983 and the industrial dispute was admittedly raised in 1986. The lack of diligence on the part of the respondent is apparent. "

24. In **(2009) 13 SCC 746, State of Karnataka** *Vs.* **Ravi Kumar** the Hon'ble Supreme Court dismissed the reference on the ground of delay and it was held that the person supervising could not be expected to prove after 14 years that the employee did not work or that he did not work for 240 days or he voluntarily left the job. The relevant portion of the aforesaid judgment reads as under:—

"9. It is not possible to expect the Asstt. Executive Engineer to prove after 14 years that the daily wager did not work or that he did not work for 240 days in a year or that the daily wager voluntarily left the work……

25. In a recent judgment of our **Hon'ble High Court delivered in CWP No. 1912 of 2016 titled as Bego Devi** *Versus* **State of H.P. and others decided on 26.10.2016,** it has been held as under:—

"9. It is beaten law of land that delay takes away the settings of law. A person who does not seek relief within time, his petition has to be dismissed only on the grounds of delay and laches, otherwise, it would amount to gross misuse of jurisdiction and disturb the settled position".

26. In view of the aforesaid law laid down by the Hon'ble Apex Court, it is clear that though the Court cannot import the period of limitation and the reference cannot be dismissed merely on the ground of delay, it does not mean that irrespective of the facts and circumstances of the case, a stale claim must be entertained and the relief should be granted. In the case of delay, no formula of universal application can be laid down and it would depend on the facts and circumstances of each case. The delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. The onus of showing that the dispute was raised within a reasonable time is upon the workman and it is for the workman to explain the delay by furnishing the acceptable explanation to the satisfaction of the Court that he was not responsible for the delay caused. The fact that the workman was making repeated representations/requests is not sufficient to explain the delay.

27. Keeping in view the aforesaid principles laid down by the Hon'ble Apex Court, the facts of this case are required to be seen. The services of the petitioner were stated to be terminated during May, 1995. The perusal of the record reveals that the petitioner had filed original application No. 779 of 1997 before the H.P. State Administrative Tribunal which was later on withdrawn by him for want of jurisdiction *vide* order dated 21.10.2004 Ex. PW-6/A. Admittedly, the demand notice was raised by the petitioner on 11.3.2015 *i.e.* after a period of about 11 years when the OA was withdrawn by him before the H.P. State Administrative Tribunal. However, no explanation has been furnished by the petitioner for not raising the demand notice within a reasonable period. The burden of proof was upon the petitioner to show that the dispute was raised within a reasonable time and to offer an explanation to the satisfaction of this Court for the delay of 11 years caused in seeking reference but the petitioner has failed to discharge his burden. The reference is therefore stale and is liable to be rejected on the ground of delay in raising the dispute.

28. On merits, from the perusal of evidence led by the parties, the petitioner has failed to prove on record that he had worked for 240 days in preceding twelve months prior to his termination. In **2009 (120) FLR 1007 incase titled as Relip Nagarpalika** *Vs.* **Babuji Gabhaji Thakore and others,** the Hon'ble Supreme Court has held as under:—

> **"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."**

In **AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat** *V/s* **Dayabhai Amar Singh,** the Hon'ble Supreme Court has held that:—

> **"In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."**

A bare perusal of the extract of the judgments re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. The perusal of mandays chart annexure R-1 shows that the petitioner had worked for a period of 226 days *w.e.f.* 26.9.1994 to 25.5.1995. No evidence to the contrary has been led by the petitioner to show that he had completed 240 days in any calendar year and in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

29. The Learned Counsel for the petitioner next contended that the respondent has taken the plea of abandonment in its reply but had totally failed to establish such plea by producing any evidence on record. As pointed out earlier, the Hon'ble Supreme Court has held that the delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. It has also been held by the **Hon'ble Supreme Court in 2009 (13) SCC 746** that the person supervising cannot be expected to prove after long delay that the employee/workman did not work for 240 days in a year or that he voluntarily left the job. It is difficult for the employer to obtain witness/es who would be competent to give evidence so many years later. It has further been held that lapse of time results in losing the remedy and the right as well and the delay in seeking the reference causes prejudice to both the employer and employee. In the present case also it would not be expected from the respondents to lead evidence and to bring witnesses or to place documents on record to prove after 11 years that the petitioner had abandoned the job at his own. The petitioner had raised the industrial dispute after lapse of about 11 years and remained silent during this period without any plausible explanation, and as such, no relief can be granted to him after a lapse of about 11 years as the delay in the present case is certainly fatal.

30. The Learned Counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondent had retained his juniors and had engaged fresh hands who are still working as such the respondent has violated the principles of "last come first go". In his evidence by way of affidavit Ex. PW-1/A, the petitioner stated that his juniors namely Amrit Singh, Sushila Kamta, Vipin and Geeta Ram are still working with the respondent and the services

of Smt. Sushila Kamta have been regularized. However, except for the statement of the petitioner, no evidence has been led by the petitioner to show that Vipin and Geeta Ram were juniors to the petitioner and they have been retained in service by the respondent. In cross-examination, RW-1 specifically denied that Vipin and Geeta Ram are juniors to the petitioner and they are still working. Furthermore, the cross-examination of RW-1 reveals that the services of Amrit Singh were re-engaged on the basis of the award dated 3.1.2015 passed by this Court and therefore it is clear that he had not been engaged by the respondent board itself. So far as the engagement of services of Smt. Sushila Kamta is concerned, she was engaged as beldar on 20.7.1998 at Sub Division Rohru as per her oral statement while she appeared before this Court as PW-2. Moreover, the perusal of Ex. PW-3/A shows that Smt. Sushila Kamta was initially engaged on 20.7.1998 at Sub Station, Samoli under Electrical Sub Division Rohru as beldar and she was transferred as T-mate on 30.1.2010 to the office of City Electric Division, HSEBL Shimla from Sub Division Nogli. However, no documentary evidence has been led by the petitioner in order to show that till what date Smt. Sushila Kamta had worked at Sub Division Rohru because as per the document Ex. PW-3/A itself she was transferred as T-mate/work charge from the office of Sub Division Nogli on 30.1.2010 and as per the statement of PW-2 herself at present she is working at City Electric Division Shimla. Therefore, in the absence of any documentary evidence on record it cannot be said that Smt. Sushila Kamta was retained as beldar by the respondent at Sub Division Rohru where the petitioner had worked. Moreover, as observed earlier, the petitioner had raised the demand notice after a period of 11 years as such there is no question of consideration of equal treatment with the junior persons who have allegedly been retained/engaged. To take this view, I am fortified with the judgment of our own **Hon'ble High Court in CWP No. 4515/2012 decided on 13.6.2012, titled as Suraj Mani** *Vs.* **HPSEB** wherein it has been held that the petitioners cannot claim equal treatment after about two decades with the juniors who have allegedly been retained. The petitioner who slept for a long period of 11 years is not entitled to claim any relief on the ground of equal treatment. Since, the reference has been proved to be stale and belated as such the protection of sections 25-G and 25-H of the Act cannot be granted to the petitioner. If the alleged termination of petitioner was either illegal or unjustified, he would not have kept silent for a period of 11 years.

31. Thus, keeping in view the above cited rulings and the material fact that the petitioner had raised the industrial dispute after lapse of about 11 years and remained silent during this period without any plausible explanation as such no relief can be granted to him. Hence, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Consequently, both these issues are answered against the petitioner.

Issue No. 2:

32. Since, the petitioner has failed to prove issue No. 1, above, this issue becomes redundant.

Issue No. 4:

33. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief:

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour

of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 4th Day of June, 2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SHRI SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref. No.: 64 of 2016
Instituted on: 1-8-2016
Decided on: 15-6-2018

Umesh Kumar s/o late Shri Mansa Ram, r/o Village Nehra, P.O. Rajhana Tehsil & District Shimla, H.P. ..*Petitioner.*

Vs.

The Executive Engineer, Division No1, HPSEB Charlie Villa Shimla-2, H.P. ..*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri R.K. Khidtta, Advocate
For respondent : Ms. Pooja, Advocate vice Shri Ramakant Sharma, Advocate.

AWARD

The reference for adjudication, sent by the appropriate government, is as under:—

"Whether alleged termination of services of Shri Umesh Kuamr s/o late Shri Mansa Ram, r/o Village Nehra, P.O. Rajhana Tehsil & District Shimla, HP. during November, 1997 by the Executive Engineer, Division No.1 HPSEB Charlie Villa Shimla-171 002 who had worked for 131 days only during 1997 and has raised his industrial dispute after about 16 years allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the working period of 131 days only and delay of more than 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

2. Briefly, the case of the petitioner is that he was engaged as beldar/worker by the respondent board *w.e.f.* 1.1.1991 and worked as such till 31.12.1997 and thereafter his services were terminated by the respondent without assigning any reason and without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) as well as the Standing Orders of the respondent. It is further stated that after his illegal termination, the petitioner visited the office of respondent number of times and requested the concerned official for his re-engagement and due to assurance given by the official of the respondent, the petitioner

remained under impression that he would be called back in job and even the official of the respondent board refused to receive the written representation of the petitioner and thereafter on 28.12.2013, the petitioner raised the demand notice. It is also stated that the petitioner had already completed 240 days in preceding twelve calendar months and he was terminated from service without complying with the mandatory provisions of section 25-F of the Act. That the respondent had engaged new persons and the petitioner was not called back and even junior persons to him namely Molak Ram, Dhan Bahadur, Prem Singh, Narender Singh, Om Prakash, Bhim Sen, Devi Ram and Mohinder etc., are still working with the respondent board in violation of the principles of "last come first go". Against this back-drop it has been prayed that the respondent be directed to reinstate the petitioner in service with all consequential service benefits such as seniority and continuity with full back-wages.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken that the petition is false and vexatious in nature, maintainability, abandonment and the petition is hit by the vice of delay and laches etc. On merits, it has been asserted that the petitioner was engaged as beldar on daily wages basis for a specific work, who had worked for a brief spell since 7.5.1997 to 25.11.1997 for 131 days only. It is further asserted that the petitioner had left the work at his own without any intimation to the respondent and his services were never terminated by the respondent, hence, there is no violation of sections 25-B, 25-F, 25-G and 25-H of the Act and he had never visited the HPSEBL authorities for his re-engagement. It is also asserted that no persons junior to the petitioner were engaged except those who were re-engaged on daily wage basis on specific Judicial Order of competent Court. It is denied that new person/junior person had been engaged by the respondent. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reiterated the averments as made in the claim petition by denying those of the respondents.

5. On the pleadings of the parties, the following issues were framed on 2.6.2017.

(1) Whether the termination of the services of the petitioner during November, 1997 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? ..*OPP.*

(2) If issue No.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? ..*OPP.*

(3) Whether the petition is not maintainable as alleged? ..*OPR.*

(4) Whether the petition is barred by limitation as alleged? ..*OPR.*

(5) Relief

6. I have heard the Learned Counsel for the parties and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1 : No
Issue No. 2 : Becomes redundant
Issue No. 3: No

Issue No. 4 : Yes

Relief: Reference answered in favour of the respondent and against the petitioner per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 & 4:

8. Being interlinked and correlated, both these issues are taken up together for decision.

9. The Learned Counsel for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without serving him any notice as required under section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that the junior persons to the petitioner are still working with the respondent and fresh workers have been engaged in violation of the provisions of section 25-G and 25-H of the Act.

10. On the other hand, Learned vice Counsel for the respondent contended that the claim of the petitioner is highly belated and stale. She further contended that the services of the petitioner had never been terminated by the respondent who had left the job at his own and even he had not completed 240 days in any calendar year. She also contended that no junior to the petitioner had been retained and no fresh hands had been engaged by the respondent, hence, he is not entitled to any relief.

11. To prove issue No.1, the petitioner examined himself as PW-2 and tendered in evidence his affidavit Ex. PW- 2/A wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence the copy of demand notice Ex. PW-2/B. In cross-examination, he denied that he was engaged by the respondent on muster roll basis on 7.5.1997. He further denied that he had worked *w.e.f.* 7.5.1997 till 25.11.1997. He also denied that he had worked only for 131 days. He denied that neither any junior was retained nor any fresh hands have been engaged. He further denied that his services were never terminated and he had left the job at his own. He admitted that he had raised the demand notice after 16 years. It may be pertinent to mention here that only the petitioner has appeared in the witness box as PW-2 and no other witness *i.e.* PW-1 or any other witness appeared in the witness box in support of the case of the petitioner.

12. On the other hand, the respondent has examined Shri Suresh Sharma Sharma, Assistant Engineer, as RW-1 who deposed that *vide* authority letter Ex. RW-1/A he has been authorized to depose on behalf of the respondent. He further stated that the petitioner had worked with the respondent *w.e.f.* 7.5.1997 till 25.11.1997 and he had never completed 240 days and no junior to him has been retained by the respondent. He also stated that the juniors to the petitioner have been engaged on the order of the Court and the petitioner has raised the demand notice after a period of 16 years. In cross-examination, he denied that the petitioner had completed 240 days in each calendar year. He admitted that no notice and compensation was given to the petitioner prior to his termination. He further admitted that his juniors namely Molak Ram, Dhan Bahadur, Prem Singh, Narender Singh, Om Prakash, Bhim Singh, Devi Ram and Mohinder are still working but volunteered that they have been retained upon the orders of the Court. He denied that fresh hands had been engaged after the termination of the petitioner.

13. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked only for 131 days as daily waged beldar with the respondent *w.e.f.* 7.5.1997 till 25.11.1997 as is evident from the mandays chart Annexure A filed by the respondent alongwith its reply. Now, the question which arises for consideration

before this Court is as to whether the reference is stale and highly belated. The Learned Counsel for the petitioner contended that under the Industrial Disputes, no limitation is prescribed and the provision of Article 137 of the Limitation Act 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay.

14. Undisputedly, the petitioner had raised his industrial dispute after a period of more than 16 years. According to the petitioner his services were terminated *w.e.f.* 31.12.1997. It is also clear from the reference itself that the petitioner had raised the industrial dispute after more than 16 years. Therefore, the position of law in respect of a stale claim is required to be seen.

15. In **(2013) 14 SCC 543, titled as Assistant Engineer Rajasthan State Agriculture Marketing Board, Sub Division Kota** *Vs.* **Mohan Lal,** it has been held by the Hon'ble Apex Court that though the Limitation Act is not applicable to the reference made under the ID Act but delay in raising industrial Dispute is an important circumstance for exercise of judicial discretion in determining relief that is to be granted. The relevant portion of aforesaid judgment is reproduced as under:—

> "19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

16. In **Assistant Executive Engineer, Karnataka *Vs.* Shivalinga reported in (2002) 10 SCC 167,** the services of the employee were terminated on 25.5.1985 and he approached the Labour Officer on 17.3.1995 and then the reference was made by the Government to the Labour Court. There was a delay of more than nine years in approaching the Labour Officer. In para 6 of the aforesaid judgment, the Hon'ble Apex Court has held as under:—

> "Learned Counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned Counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs.* Sirhind Coop. Marketing-cum-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the Learned Counsel have no application to the case on hand."

Thus, it has been held that in case there is a serious dispute or doubt in such relationship and the records of the employer become relevant, the long delay would come in the way of maintenance of the same.

17. In **Haryana State Coop. Land Development Bank** *Vs.* **Neelam reported in (2005) 5 SCC 91**, the employee was discontinued from service *w.e.f.* 30.5.1986 and he raised the demand notice on 30.9.1993 and thereafter the reference was sent to the Labour court by the appropriate government. The Labour Court passed an order answering the reference against the employee holding that the claim was belated. Thereafter, a writ petition was filed before the Hon'ble High Court which was allowed and the employee was directed to be reinstated in service with continuity of service but without back-wages. The Hon'ble Supreme Court set aside the judgment of the High Court and restored the judgment of the Labour Court as a result the reference stood answered against the workman. The relevant portion of the aforesaid judgment is reproduced as under:—

> 13. "In Ajaib Singh (*supra*), the management did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. In that case, the Labour Court granted the relief, but the same was denied to the workman only by the High Court. The Court referred to the purport and object of enacting Industrial Disputes Act only with a view to find out as to whether the provisions of the Article 137 of the Schedule appended to the Limitation Act, 1963 are applicable or not. Although, the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in Ajaib Singh (*supra*), but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the appropriate Government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court."
>
> 14. **"The decision of Ajaib Singh (*supra*) must be held to have been rendered in the fact situation obtaining therein and no ratio of universal application can be culled out therefrom. A decision, as is well-known, is an authority of what it decides and not what can logically be deduced therefrom** Bharat Forge Co. Ltd. *Vs*. Uttam Manohar Nakate, JT 2005 (1) SC 303], and Kalyan Chandra Sarkar *vs.* Rajesh Ranjan @ Pappu Yadav & Anr. para 42.
>
> "15" In Balbir Singh *vs.* Punjab Roadways and Another [(2001) 1 SCC 133], as regard Ajaib Singh *(supra*), this Court observed :—
>
> 5. "The Learned Counsel for the petitioner strenuously urged that the Tribunal committed error in denying relief to the workman merely on the ground of delay. The Learned Counsel submitted that in industrial dispute delay should not be taken as a ground for denying relief to the workman if the order/orders under challenge are found to be unsustainable in law. He placed reliance on the decision of this Court in the case of Ajaib Singh *v*. Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. [(1999) 6 SCC 82 : 1999 SCC (L&S) 1054 : JT (1999) 3 SC 38].
>
> 6. "We have carefully considered the contentions raised by the Learned Counsel for the petitioner. We have also perused the aforementioned decision. We do not find that any general principle as contended by the Learned Counsel for the petitioner has been laid down in that decision. The decision was rendered on the facts and circumstances of the case, particularly the fact that the plea of delay was not taken by the management in the proceeding before the Tribunal. In the case on hand the plea of delay was raised and was

accepted by the Tribunal. Therefore, the decision cited is of little help in the present case. Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially."

16. "Yet again in Assistant Executive Engineer, Karnataka *vs.* Shivalinga [(2002) 10 SCC 167], a Bench of this Court observed :—

"6. Learned Counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned Counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs*. Sirhind Coop. Marketing-cum-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases **where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale.** That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the Learned Counsel have no application to the case on hand."

17. "In Nedungadi Bank Ltd. (*supra*), a Bench of this Court, where S. Saghir Ahmad was a member [His Lordship was also a member in Ajaib Singh (*supra*) , opined :—

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. **As to when a dispute can be said to be stale would depend on the facts and circumstances of each case.** When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made."

(Emphasis supplied).

18. In **(2006) 5 SCC 433 in case titled as UP State Road Transport Corporation** *Vs.* **Babu Ram,** the termination was dated 19.9.1983 and the reference was made on 29.8.1998. The Labour Court has held the termination as un-valid without considering the question of delay. The Hon'ble High Court dismissed the writ petition. The Hon'ble Supreme Court has held that no material was placed on record to show that the dispute was raised within reasonable time and the employee was not responsible for delay. The relevant portion of the aforesaid judgment is reproduced as under:—

"10. It is to be noted that the High Court has very cryptically disposed of the writ petition. The workman has not placed any material to show that it had raised dispute within a reasonable time, and/or that he was not responsible for delayed decision if any in the conciliation proceedings. It was for him to show that the dispute was raised within a reasonable time and that he was not responsible for any delay. The High Court, on a hypothetical basis has assumed that the dispute might have been raised promptly but delayed by the State Government and he cannot be penalized for delay in finalizing the conciliation proceedings and the reference. But neither the Labour Court nor the High Court has even noted the factual position. The conclusion was based on surmises and conjectures."

19. **In Assistant Engineer, CAD Kota** *Vs.* **Dhan Kunwar reported in (2006) 5 SCC 481,** the delay was of about eight years in raising the dispute. The Labour Court granted reinstatement with 30 % back-wages. The writ petition and writ appeal filed by the employer were dismissed. However, the Hon'ble Apex Court set aside the judgments of Hon'ble High Court and the Labour Court and held that no relief should have been granted. The relevant portion of the aforesaid judgment is reproduced hereinunder:—

"9. In the background of what has been stated above, the Labour Court should not have granted relief. Unfortunately, learned Single Judge and the Division Bench did not consider the issues in their proper perspective and arrived at abrupt conclusions without even indicating justifiable reasons……..

20. In **UP State Road Transport Corporation** *Vs.* **Ram Singh and another (2008) 17 SCC 627,** the termination was dated 15.3.1973 and the reference was dated 15.6.1986 and there was a delay of about 13 years in making the reference. The reference was dismissed on the ground of delay. The relevant portion of the aforesaid judgment reads as under:—

" 7. We are of the view that in the facts and circumstances of the case, the High Court erred in not setting aside the award of the Labour Court. Apart from the unacceptable manner in which the appellant was denied the opportunity of participating in the proceedings, including being debarred from cross-examining the respondent, the Labour Court could not have entertained the industrial dispute given the enormous delay. This Court has in several decisions has held that while delay cannot by itself be sufficient reason to reject an industrial dispute, nevertheless the delay cannot be unreasonable. The decision in Prakash Chander Sahu has reaffirmed this principal. The reason for diligence and promptness lies in the fact that the records pertaining to an employee might have been destroyed and it would be difficult to obtain witnesses who would be competent to give evidence so many years later if the Labour Court wishes to hold a further enquiry into the matter. In the present case, the delay of 13 years is unreasonable. The mere fact that the respondent was making repeated representations would not justify his raising the issue before the Labour Court after 13 years. In any event, the last representation was made in 1983 and the industrial dispute was admittedly raised in 1986. The lack of diligence on the part of the respondent is apparent. "

21. In **(2009) 13 SCC 746, State of Karnataka** *Vs.* **Ravi Kumar** the Hon'ble Supreme Court dismissed the reference on the ground of delay and it was held that the person supervising could not be expected to prove after 14 years that the employee did not work or that he did not work for 240 days or he voluntarily left the job. The relevant portion of the aforesaid judgment reads as under:—

"9. It is not possible to expect the Asstt. Executive Engineer to prove after 14 years that the daily wager did not work or that he did not work for 240 days in a year or that the daily wager voluntarily left the work……

22. In a recent judgment of our **Hon'ble High Court delivered in CWP No. 1912 of 2016 titled as Bego Devi** *Versus* **State of H.P. and others decided on 26.10.2016,** it has been held as under:—

> **"9. It is beaten law of land that delay takes away the settings of law. A person who does not seek relief within time, his petition has to be dismissed only on the grounds of delay and laches, otherwise, it would amount to gross misuse of jurisdiction and disturb the settled position".**

23. In view of the aforesaid law laid down by the Hon'ble Apex Court, it is clear that though the Court cannot import the period of limitation and the reference cannot be dismissed merely on the ground of delay, it does not mean that irrespective of the facts and circumstances of the case, a stale claim must be entertained and the relief should be granted. In the case of delay, no formula of universal application can be laid down and it would depend on the facts and circumstances of each case. The delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. The onus of showing that the dispute was raised within a reasonable time is upon the workman and it is for the workman to explain the delay by furnishing the acceptable explanation to the satisfaction of the Court that he was not responsible for the delay caused. The fact that the workman was making repeated representations/requests is not sufficient to explain the delay.

24. Keeping in view the aforesaid principles laid down by the Hon'ble Apex Court, the facts of this case are required to be seen. The services of the petitioner were allegedly terminated *w.e.f.* 25.11.1997 and he raised the present dispute after a period of more than 16 years. In his statement by way of affidavit Ex. PW-2/A, the petitioner as PW-1 has stated that after his termination he was assured by the official of the respondent that he would be called back in his job. However, except for his bald statement there is no other evidence on record to suggest as to when the official of the respondent had given him assurance. No documentary evidence has been produced by the petitioner to prove that he had been visiting the respondent for his re-engagement during the period of 16 years. In the opinion of this Court, the explanation furnished by the petitioner for not raising the demand notice within a reasonable period cannot be accepted. The burden of proof was upon the petitioner to show that the dispute was raised within a reasonable time and to offer an explanation to the satisfaction of this Court for the delay of 16 years caused in seeking reference but the petitioner has failed to discharge his burden. The reference is therefore stale and is liable to be rejected on the ground of delay in raising the dispute.

25. On merits, from the perusal of evidence on record, it is clear that the petitioner has failed to prove on record that he had worked for 240 days in preceding twelve months prior to his termination. In **2009 (120) FLR 1007 incase titled as Relip Nagarpalika** *Vs***. Babuji Gabhaji Thakore and others,** the Hon'ble Supreme Court has held as under:—

> **"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."**

In **AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat** *V/s* **Dayabhai Amar Singh, the Hon'ble Supreme Court has held that:—**

> **"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in**

that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. The petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination. The perusal of mandays chart Annexure RA-1 shows that the petitioner had worked with the respondents only for 131 days *w.e.f.* 7.5.1997 till 25.11.1997. No evidence has been led by the petitioner to contradict the mandays chart Annexure RA-1 annexed by the respondent with its reply. There is no *iota* of evidence which could go to show that the petitioner had completed 240 working days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

26. The Learned Counsel for the petitioner next contended that the respondent had taken the plea of abandonment in its reply but had totally failed to establish such plea by producing any evidence on record. As pointed out earlier, the Hon'ble Supreme Court has held that the delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. It has also been held by the **Hon'ble Supreme Court in 2009 (13) SCC 746** that the person supervising cannot be expected to prove after long delay that the employee/workman did not work for 240 days in a year or that he voluntarily left the job. It is difficult for the employer to obtain witness/es who would be competent to give evidence so many years later. It has further been held that lapse of time results in losing the remedy and the right as well and the delay in seeking the reference causes prejudice to both the employer and employee. In the present case also it would not be expected from the respondents to lead evidence and to bring witnesses or to place documents on record to prove after 16 years that the petitioner had abandoned the job at his own. The petitioner had raised the industrial dispute after lapse of about 16 years and remained silent during this period without any plausible explanation, and as such, no relief can be granted to him after a lapse of about 16 years as the delay in the present case is certainly fatal.

27. The Learned Counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondent had retained his juniors and had engaged fresh hands who are still working as such the respondent had violated the principles of "last come first go". In his evidence by way of affidavit Ex. PW-2/A, the petitioner has stated that his juniors namely Molak Ram, Dhan Bahadur, Prem Singh, Narender Singh, Om Prakash, Bhim Sen, Devi Ram and Mohinder are still working with the respondent board. Though, RW-1 admitted that the aforesaid persons are still working. However, at the same time he volunteered that they have been retained upon the orders of the Court. No evidence has been led by the petitioner to show that the aforesaid persons junior to him have been retained by the respondents at its own. Moreover, the petitioner cannot claim equal treatment with his alleged juniors as he had raised the demand notice after a period of 16 years. To take this view, I am fortified with the judgment of our own **Hon'ble High Court in CWP No. 4515/2012 decided on 13.6.2012, titled as Suraj Mani *Vs.* HPSEB wherein it has been held that the** petitioners cannot claim equal treatment after about two decades with the juniors who have allegedly been retained. The petitioner who slept for a long period of 16 years is not entitled to claim any relief on the ground of equal treatment. Since, the reference has been proved to be stale and belated as such the protection of sections 25-G and 25-H of the Act cannot be granted to the petitioner. If the alleged termination of petitioner was either illegal or unjustified, he would not have kept silent for a period of 16 years.

28. Thus, keeping in view the above cited rulings and the material fact that the petitioner had raised the industrial dispute after lapse of about 16 years and remained silent during this period without any plausible explanation as such no relief can be granted to him. Hence, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Consequently, both these issues are answered against the petitioner.

Issue No. 2:

29. Since, the petitioner has failed to prove issue No.1, above, this issue becomes redundant.

Issue No. 3:

30. In support of this issue, no evidence has been led by the respondent. Moreover, the present claim petition has been filed by the petitioner pursuant to the reference sent by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief:

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 15th Day of June, 2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

22.06.2018
Present: None for the petitioner
Sh. Rajeev Sharma, Ld. Csl. for respondent

Case called repeatedly, but neither the petitioner nor his Advocate appeared today before this Court. His counsel was present on the previous date of hearing, when he filed the claim on behalf of the petitioner, which fact shows that the petitioner/his counsel was aware about the today's proceedings. However neither the petitioner nor his counsel has put in appearance before this court today, which clearly shows that at present the petitioner is not interested to pursue his case arising out of the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:—

"Whether termination of services of Shri Vikas Thakur s/o Shri Vidya Sagar, VPO Cholthra, Tehsil Sarkaghat, Distt. Mandi, H.P. *w.e.f.* 08.10.2016 by the Factory

Manager of M/s Autocop (India) Pvt. Ltd., 22, EPIP, Phase-II, Village Thana, Baddi, Tehsil Nalagarh, Distt. Solan, H.P., without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from above employer/management?"

From the aforesaid reference, it is clear that the petitioner has alleged his termination *w.e.f* 08.10.2016 to be illegal and unjustified but, the petitioner as well his counsel has failed to appear before this Court today. The claim was filed in this case on last date of hearing, however, except for the claim petition, there is no other material on record/file which could go to show that *w.e.f* 08.10.2016 the services of the petitioner have been terminated illegally without complying with the provisions of Industrial Disputes Act, 1947. Hence, in the absence of any concrete material on record, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and in favour of the respondent and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
22.06.2018.

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
Labour Court, Shimla
(Camp at Nalagarh).

25.6.2018
Present : None for the petitioners
Shri Hitender Thakur, Advocate Vice Csl. for respondent

It is 10.45 AM. Case called twice but none appeared on behalf of the petitioners. Be awaited.

Presiding Judge,
Labour Court, Shimla.

Case called again

Present : None for the petitioners
Shri Hitender Thakur, Advocate Vice Csl. for respondent

It is 12.55 PM. Case called again but neither the petitioners nor their Advocate has appeared before this Court. Be called after lunch.

Presiding Judge,
Labour Court, Shimla

Case called after lunch

Present : None for the petitioners
Shri Hitender Thakur, Advocate for respondent

It is 3.30 PM. Case called repeatedly in pre and post lunch sessions but neither the petitioners nor their Advocate has appeared before this Court despite the fact that for today this case has been

listed for filing of claim but despite having been afforded opportunities to file the claim the petitioners have failed to appear before this Court and to file statement of claim which clearly shows that at present the petitioners are not interested to pursue their case arising out of the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:—

"Whether the stoppage of annual increments and not providing safety measures to the workers of the dispute by the management of M/s Case Cold Roll Forming Ltd., Trilokpur Road, Kala Amb, Tehsil Nahan, District Sirmaur, H.P. is legal and justified? If not, to what relief the concerned workmen are entitled to?"

From the aforesaid reference, it is clear that the petitioners have alleged the stoppage of annual increments and not providing safety measures to the workers of the dispute by the management of respondent to be illegal and unjustified but despite the fact that the case has been called several times none has appeared on behalf of the petitioners and failed to file statement of claim in support of their contention arising out of reference. At this stage, there is no material on record/file which could go to show that the respondent management had stopped the annual increments of the petitioners and had also not provided safety measures to the workers. Hence, this Court is left with no other alternative but to answer the reference against the petitioners and as such the reference is answered against the petitioners and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
25.6.2018.

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
Labour Court, Shimla.

IN THE COURT OF SHRI SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA CAMP AT NALAGARH**

Ref. No. : 45 of 2014
Instituted on: 20-5-2014
Decided on: 22-6-2018

Shamsher Singh s/o Shri Ram Asra, r/o Village & P.O. Joghon, Tehsil Nalagarh, District Solan, H.P. ..*Petitioner*.

Vs.

M/s Venkteshwara Hatcheries (P) Ltd., Village Panjehra, Tehsil Nalagarh, District Solan, H.P., through its Managing Director ..*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri P.N. Bhanot, Advocate

For respondent : Shri Amit Gupta, Advocate

AWARD

The following reference has been received from appropriate government by this court for adjudication:—

"Whether the termination of the services of Shri Shamsher Singh s/o Shri Ram Asra, r/o Village and P.O. Joghon, Tehsil Nalagarh, District Solan, H.P. by the Managing Director/Employer, Venkateshwara Hatcheries Pvt. Ltd., Village Panjehra, Tehsil Nalagarh, District Solan, H.P. *w.e.f.* 29.10.2011 is legal and justified? If not, what back-wages, seniority, service benefits and relief above worker is entitled from the above employer?"

2. Briefly, the case of the petitioner is that on 1.1.1987, he was appointed as sweeper by Shivalik Hatcharies on monthly salary of 390/- and the name of Shivalik Hatcharies was subsequently changed to Venkateshwara Hatcharies Pvt. Ltd. (respondent) and 17-18 years ago unit No. 2 was set up at Village Panjehra. It is further stated that the petitioner was performing his duty to the entire satisfaction of the employer and in the year, 2011 Dr. Anil, Manager of the respondent started treating the petitioner in an inhuman manner and asked him to go to unit No. 2 in Village Panjehra for a period of 15 days and the petitioner politely complied the direction of the Manager and after working for 15 days in unit No. 2, the petitioner again reported for his duty at Village Pater Bhounkhu, the place of his appointment but the Manager asked him to go to unit No. 2 instead of unit No.1 upon which the petitioner requested the Manager in writing to either allow him to continue his duty at Village Pater Bhounkhu or transfer him to unit -2 on permanent basis. It is also stated that on 29.10.2011, the petitioner came to his duty at unit-1 but he was turned out from the office and was not allowed to resume his duties and thereafter the petitioner appeared before the SDM Nalagarh and made an application in this regard. That the petitioner who was regularly coming to join his duty at Village Pater Bhounkhu was not allowed to resume his duty as his entry was banned from the entry gate and even before the conciliation officer, the Manager did not agree to the lawful requests of the petitioner. That the petitioner who was under mental tension and duress, was forced to compromise the matter and the petitioner asked the management to allow him to join the duty but the management was not ready to budge from their earlier stand to terminate the services of the petitioner. That the termination of the services of the petitioner by the management is illegal, invalid and without adopting any legal process. Against this back-drop, it has been prayed that the resignation and termination of the services of petitioner be declared as illegal and he be treated on duty without any break and all his back-wages from October, 2010 till date alongwith increments and other benefits be awarded to him. It is also prayed that the petitioner be also awarded compensation amount of 50,000/-.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken *qua* maintainability, suppression of material facts and estoppel. On merits, it has been admitted that the petitioner was working in the respondent company as sweeper. It has been asserted that the petitioner was appointed on 1.10.1987. It is further asserted that the petitioner was a chronic and habitual absentee right from the time of his appointment and he had been issued many show cause notices on number of occasions and in every reply to show cause he had admitted his fault and made the promises that he would not be absent and would not go on leave without permission in future and the management of respondent company had always been kind enough to forgive him keeping in view of his family circumstances and the management was hopeful that the petitioner would improve his ways but there was no improvement in his conduct. That the petitioner started misbehaving with his colleagues and other senior officers of the company and on 28.10.2011, he misbehaved with supervisor grade-1 and unit

head of the unit -1 and on a complaint, the petitioner was shifted to unit-II but he did not report for duty on 29.10.2011 in unit-II and did not turn up thereafter upon which the management issued three notices dated 21.11.2011, 3.12.2011 and 9.12.2011 through registered post to him but despite that he did not report for duty. It is denied that the petitioner was forced to compromise the matter before the Conciliation Officer. It is asserted that the petitioner himself voluntarily resigned from his job on personal and domestic reason and entire claim has been settled by paying 90,000/- which included his gratuity, leave encashment, bonus, notice period salary etc. in the presence of Labour Officer, Baddi and Shri Satish Inder Nath Bhanot, President Bhartiya Mazdoor Union, who was accompanying the petitioner. The respondent prayed for the dismissal of the claim petition.

4. Rejoinder not filed. On the pleadings of the parties, the following issues were framed by this Court on 27.11.2015.

(1) Whether the termination of the services of the petitioner *w.e.f.* 29.10.2011 is illegal and unjustified as alleged? ..*OPP.*

(2) If issue No.1 is proved in affirmative, then to what legal benefits the petitioner is entitled? ..*OPP.*

(3) Whether the petition is not maintainable in the present form as alleged? ..*OPR.*

(4) Whether the petitioner is estopped from filing the present petition by his own act, conduct and acquiescence? ..*OPR.*

(5) Relief

5. I have heard the Learned Counsel for the parties and also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1:	No
Issue No. 2 :	Becomes redundant
Issue No. 3 :	No
Issue No. 4 :	Not pressed
Relief:	Reference answered in favour of the respondent and against the petitioner per operative part of award.

REASONS FOR FINDINGS

Issue No. 1:

7. To prove his case, the petitioner stepped into the witness box as PW-1 and deposed that he joined the respondent company as a sweeper on 1.10.1987 and worked as such till the year, 2011 when he was sent to unit-2 of the company at Panjhera on Swar Ghat Road and he worked there only for 15 days as he was sent there only for 15 days and thereafter he again reported for his duty at unit-1 before the Manager Dr. Anil who again directed him to report at unit-2 but he (*petitioner*) told him (Manager) that he be retained at the place where he was initially appointed upon which the manager told him that he will be thrown out from the gate. He further stated that thereafter he was regularly coming to unit-1 for his duty but he was not allowed to join. He also stated that he made a complaint before the SDM who had referred the complaint to Labour

Inspector Baddi. He had never refused to perform his duty with the respondent. In cross-examination, he expressed his ignorance regarding the issuance of letters Mark A-1 to Mark A-8 by the respondent company. He denied that Fauja Singh had made a complaint against him. He further denied that he was sent to unit-2 as he misbehaved with the staff at unit-1. He also denied that he had never worked at unit-2. He admitted that he received the notice dated 21.11.2011 Ex. RX-1, letter dated 3.12.2011 Ex. RX-2 and letter dated 9.12.2011 Ex. RX-3. He denied that he had tendered his resignation Mark A-16 in the presence of the Labour-*cum*-Conciliation Officer Baddi. He admitted that Mr. Satish Inder Nath Bhanot, President Bhartiya Mazdoor Sangh was present at that time. He admitted that the respondent company had given him two cheques amounting to ₹85000/- and ₹5000/- in cash on 3.4.2012. He stated that the company had not forced him to accept the aforesaid amount. He admitted that the receipt Ex. RX-4 bears his signatures encircled in red.

8. PW-2 Shri Gorkha Singh sanitary fitting shopkeeper deposed that in the year, 2011 the petitioner was working at unit-1 and he had been frequently visiting his shop on way to unit No-1. He further deposed that for 15 days the petitioner was attending duty at unit-2 and used to come to his shop only after the duty and when the petitioner again reported for duty at unit No-1 then he used to come to his shop at noon and used to say that he was not allowed to enter the gate for a period of six months. In cross-examination, he denied that he was not running any shop. He further denied that the petitioner never came to his shop with the grievance that he was not allowed to join. He also denied that the petitioner never worked at unit-2.

9. On the other hand, the respondent has examined one Shri Arindam Ganguly, Assistant Manager (P&A) as RW-1 who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence authority letter Ex. R-1, letter dated 12.9.1993 Ex. R-2, letter dated 20.4.2000 Ex. R-3, letter dated 31.10.2000 Ex. R-4, letter dated 18.12.2000 Ex. R-5, letter dated 4.1.2001 Ex. R-6, notice dated 25.12.2001 Ex. R-7, letter dated 22.3.2003 Ex. R-8, letter dated 4.4.2003 Ex. R-9, reply dated 31.10.1990 Ex. R-10, reply dated 1.6.2000 Ex. R-11, reply dated 12.9.2001 Ex. R-12, reply dated 6.12.2001 Ex. R-13, reply dated 16.5.2002 Ex. R-14, complaint dated 28.10.2011 Ex. R-15 and reply dated 28.11.2011 Ex. R-16. In cross-examination, he admitted that the identity card Mark X was issued by the company on 1.12.1996. He denied that the petitioner was sent to unit-2 on temporary basis. He further denied that the petitioner had worked at unit-2 for 15 days and he again reported for duty at unit-1. He also denied that the petitioner insisted that either his service record should be sent to unit-2 or he should be retained at unit-1. He denied that notices Ex. RX-6 and Ex. RX-7 were issued on behalf of unit No.1. He further denied that the petitioner had been visiting unit No.1 regularly after doing job in unit No. II but he was not allowed to enter unit No.1. He also denied that the services of the petitioner were terminated illegally and is entitled to all service benefits. He denied that no show cause notice was served upon the petitioner.

10. RW-2 Shri Manish Karol, Labour Officer, Baddi has stated that the petitioner had filed a complaint before the SDM Nalagrah which was referred to him and he had called both the parties for hearing. He tendered in evidence the copy of proceedings dated 16.1.2012, 6.3.2012, 21.3.2012, 26.3.2012 and 3.4.2012 Ex. RW-2/A. He further stated that on 3.4.2012, a settlement took place between the petitioner and respondent management on which date a sum of ₹5,000/- was paid in cash and two cheques total amounting to ₹85,000/- were handed over to the petitioner by the management in terms of settlement and the petitioner had tendered his resignation *vide* letter dated 3.4.2012 Ex. RW-2/B. In cross-examination, he admitted that the complaint filed by the petitioner before the SDM was for his re-instatement. He denied that the resignation letter Ex. RW-2/B and the receipt Ex. RX were produced before him by the management. He admitted that he had not sent any report to the SDM. He denied that the settlement was effected between the parties under pressure and for that reason he had not submitted the report before the SDM.

11. I have closely scrutinized the entire evidence on record and after the closure scrutiny thereof it has become clear that the petitioner had joined the respondent company on 1.10.1987 as a sweeper and worked as such till the year 2011. The case of the petitioner is that Dr. Anil who was the manager of the respondent company starting treating him in an inhuman manner in the year, 2011 and asked him to go to unit No.2 in Village Panjhera for a period of 15 days and after working there for 15 days in unit-2, the petitioner again reported for his duty at Village Pater Bhounkhu, the place of appointment of the petitioner but Dr. Anil the manager asked the petitioner to go to unit -2 instead of unit-1, however, the petitioner requested him that he be retained at the place where he was initially appointed upon which the manager told him that he would be thrown out from the gate. The further case of the petitioner is that he was regularly coming to join his duties but he was not allowed to join his duties. On the other hand, the case of the respondent is that the petitioner was not performing his duties to the entire satisfaction of the respondent as he was chronic and habitual absentee right from the date of his appointment and he was issued many show cause notices on number of occasions and even in reply to the show cause notices the petitioner had been admitting his fault and making the promises that he would not remain absent in future. The further case of the respondent is that the management of the respondent company had always been kind enough to forgive him but there was no improvement in the conduct of the petitioner and he even started misbehaving with his colleagues and other senior officials of the company. RW-1 also tendered in evidence the show cause notices Ex. R-3 to Ex. R-9, reply to show cause notices Ex. R-10 to Ex. R-14. RW-1 in his evidence by way of affidavit Ex. RW-1/A deposed that on 28.10.2011, the petitioner crossed all limits and misbehaved with Supervisor and Unit Head of unit -1 where he was deployed upon which the concerned officials lodged a complaint against the petitioner with the management. He further deposed that the respondent shifted the petitioner to unit-2 but the petitioner did not report for duty on 29.10.2011 at unit -2 and did not turn up thereafter. He further deposed that in the reply dated 28.11.2011 the petitioner again admitted his absence and admitted that he be again adjusted in unit -1, however, this time his unjustified demand was rejected by the management *vide* letter dated 3.12.2011 and the petitioner was asked to report for his duties in unit-2 within 24 hours and it was also made clear to the petitioner that in case he did not join within the stipulated period, the management will be at liberty to proceed further in the matter. It has also been deposed that the petitioner had appeared before the Labour Inspector/Conciliation Officer Nalagarh and thereafter both the parties appeared before Labour Officer Baddi and the petitioner had himself voluntarily resigned from his job and his entire claim was settled by paying ₹90,000/- which included his gratuity, leave encashment, bonus, notice period salary etc. He also deposed that this settlement was arrived at before the Labour Officer Baddi and in the presence and witness of Shri Satish Inder Nath Bhanot, President, Bhartiya Mazdoor Sangh, who was accompanying the petitioner. The aforesaid statement of RW-1 is corroborated by RW-2 Shri Manish Karol, who was posted as Labour Officer, Baddi during the year, 2012. He categorically deposed that on 3.4.2012, a settlement took place between the petitioner and the respondent management on which date a sum of ₹5000/- was paid in cash and two cheques amounting to ₹85000/- were handed over to the petitioner by the respondent management in terms of settlement and the petitioner had tendered his resignation *vide* letter dated 3.4.2012 Ex. RW-2/B. He also deposed that the petitioner had given his receipt towards his full & final dues Ex. RX-4. In his claim petition, the petitioner pleaded that under mental tension and duress he was forced to compromise the matter and was compelled to sign certain papers. However, to prove the aforesaid fact no evidence has been led by the petitioner. Even, in his examination-in-chief the petitioner has not uttered a single word. Though, in cross-examination, he stated that he was forced to tender his resignation in the presence of Mr. Arindam Gangully, Assistant Manager (HR) of the respondent company but at the same time he admitted his signatures on the resignation letter. He also admitted that at the time of settlement, Mr. Satish Inder Nath, President Bhartiya Mazdoor Sangh was also present. He also admitted that the respondent company had given him two cheques amounting to ₹85000/- and ₹5000/- in cash on 3.4.2012 and the company had not forced him to accept the aforesaid amount. He also admitted his signatures on the receipt Ex. RX-4. The onus was upon the petitioner to prove by leading cogent evidence on

record that he was forced to compromise the matter and tender his resignation as he was under mental tension. However, as observed earlier no cogent and satisfactory evidence has been led by the petitioner in this respect. Rather, he admitted his signatures on the resignation letter and also admitted that he received a sum of ₹90,000/- in total from the respondent company towards his full & final settlement of the claim and also admitted his signatures on the receipt Ex. RX-4. Even, RW-2, the Labour Officer has categorically deposed that on 3.4.2012, a settlement took place between the petitioner and the respondent management on which date a sum of ₹5,000/- in cash and two cheques amounting to ₹85,000/- were handed over to the petitioner in terms of the settlement and the petitioner had tendered his resignation *vide* letter dated 3.4.2012. RW-2 was cross-examined at length by the Learned Counsel for the petitioner however nothing favourable could be elicited from his lengthy cross-examination and there is no reason to disbelieve the testimony of RW-2. The perusal of resignation letter Ex. RW- 2/B, shows that the petitioner himself had tendered his resignation on 3.4.2012 and had also requested therein that his resignation be accepted and his full & final settlement/dues be paid to him. In **(1990) 4 SCC 27, J.K. Cotton Spinning and Weaving Mills Company Ltd. *Vs.* State of U.P and others,** the effect of voluntary resignation was considered by the Hon'ble Supreme Court and it was held that when an employee voluntarily tender his resignation, it is an act by which he voluntarily gives up his job and therefore, such a situation is covered by the expression "Voluntary retirement". The relevant portion of the aforesaid judgment is reproduced as under:—

> **"8. In the present case the employee's request contained in the letter of resignation was accepted by the employer and that brought an end to the contract of service. The meaning of term 'resign' as found in the Shorter Oxford Dictionary includes 'retirement'. Therefore, when an employee voluntarily tenders his resignation it is an act by which he 'voluntarily gives up his job. We are, therefore, of the opinion that such a situation would be covered by the expression 'voluntary retirement' within the meaning of clause (i) of Section 2(s) of the State Act. In Santosh Gupta's case Chinnappa Reddy, J. observed as under:—**
>
> > **"Voluntary retrenchment of a workman or the retrenchment of the workman on reaching the age of superannuation can hardly be described as termination, by the employer, of the service of a workman".**
>
> **(Here the word 'retrenchment' has reference to 'retirement'.)**
>
> **The above observation clearly supports the view which commends itself to us. We are, therefore, of the opinion that the High Court was not right in concluding that because the employer accepted the resignation offer voluntarily made by the employee, he terminated the service of the employee and such termination, therefore, fell within the expression 'retrenchment' rendering him liable to compensate the employee under section 6-N. We are also of the view that this was a case of 'voluntary retirement' within the meaning of the first exception of section 2(s) and therefore the question of grant of compensation under section 6-N does not arise. We, therefore, cannot allow the view of the High Court to stand".**

In the instant case, the petitioner has failed to prove that he had tendered his resignation under duress, coercion or misrepresentation rather he had accepted his full & final dues *vide* receipt Ex. RX-4. Therefore, if the petitioner had tendered his resignation and accepted his full & final dues before the Conciliation Officer, Baddi, then in the absence of any fraud, coercion or duress being proved, the service of the petitioner comes to an end. In view of the aforesaid decision of the Hon'ble Supreme Court, such a situation would be covered by the expression "voluntary

retirement" within the meaning of the exception contained in the clause (a) of section 2(oo) of the Industrial Disputes Act, 1947 and the same will not fall within the definition of the retrenchment.

12. Therefore, in view of the law laid down by the Hon'ble Supreme Court (*supra*), and also in view of entire evidence on record, it cannot be said that the termination of the services of petitioner by the respondent *w.e.f.* 29.10.2011 is illegal and unjustified. Accordingly, issue No.1 is decided in favour of the respondent and against the petitioner.

Issue No. 2:

13. Since, the petitioner has failed to prove issue No.1, above, this issue becomes redundant.

Issue No. 3:

14. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 4:

15. During the course of arguments, this issue was not pressed by the Learned Counsel for the respondent, hence, the same is decided in favour of the petitioner and against the respondent.

Relief:

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 22nd Day of June, 2018.

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla,
Camp at Nalagarh.

IN THE COURT OF SHRI SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Ref. No. 72 of 2016
Instituted on 4-8-2016
Decided on 26-6-2018

Roop Ram s/o Shri Daultia Ram, r/o Village Thali, P.O. Baldeyan, Tehsil & District Shimla, H.P. ..*Petitioner.*

VS.

Executive Engineer, I&PH Division No.1 Kasumpati, Shimla, H.P. ..*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Naresh Sharma, Advocate
For respondent : Shri H.N. Kashyap, ADA

AWARD

The reference for adjudication, sent by the appropriate government, is as under:—

"Whether alleged termination of services of Shri Roop Ram s/o Shri Daultia Ram, r/o Village Thali, P.O. Baldeyan, Tehsil & District Shimla, H.P. during the year, 1986 by the Executive Engineer, I&PH Division Kasumpati Shimla-9 H.P. who had worked as beldar on daily wages and has raised his industrial dispute after about 27 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the delay of about 27 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation, the above exworker is entitled to from the above employer?"

2. Briefly, the case of the petitioner is that initially *w.e.f.* the year, 1985, the petitioner was appointed as class-IV on daily wage basis and worked as such till 1987 and thereafter his services were orally terminated by the respondent without any reason and without serving any prior notice upon him and also without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). It is further stated that the respondent department had engaged many fresh persons after the illegal termination of the petitioner and many persons junior to him have been retained in violation of sections 25-G and 25-H of the Act. It is also stated that the petitioner had completed 240 days in twelve calendar months preceding to the date of his oral and illegal termination. That the petitioner made several requests seeking re-employment by visiting the office of the respondent number of times but in turn he was every time assured that as and when his services will be required, he would be called but of no avail. That the conciliation meetings failed due to unreasoned attitude of the respondent. Against this back-drop a prayer has been made that the directions be issued to the respondent to re-instate the petitioner in service alongwith all consequential service benefits including back-wages.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken *qua* maintainability and delay and laches. On merits, it has been asserted that the petitioner was engaged on daily wage basis and worked for 150 days during the year, 1985 and 140 days during the year, 1986 and thereafter he had left the job at his own and never turned up for work. It is denied that the services of the petitioner were terminated orally and illegally. It is further asserted that in case the services of the petitioner were terminated by the respondent department he would not have been remained silent for a period of 29 years and since the petitioner had not completed 240 days in any calendar year and even his services were never terminated by the respondent, hence, prior notice under section 25-F of the Act was not required to be served upon him. The respondent prayed for the dismissal of the claim petition.

4. Rejoinder not filed. On the pleadings of the parties, the following issues were framed on 23.10.2017.

(1) Whether the termination of the services of the petitioner by the respondent during the year, 1986 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? ..*OPP.*

(2) If issue No.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? ..*OPP.*

(3) Whether the petition is hit by delay and latches as alleged? ..*OPR.*

(4) Relief.

5. I have heard the Learned Counsel for the petitioner and Learned ADA for respondent and have also gone through the record of the case:—

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1 : No
Issue No. 2 : Becomes redundant
Issue No. 3 : Yes
Relief : Reference answered in favour of the respondent and against the petitioner per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 & 3 :

7. Being interlinked and correlated, both these issues are taken up together for decision.

8. The Learned Counsel for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without serving him any notice as required under section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that the junior persons to the petitioner are still working with the respondent and fresh workers have been engaged in violation of the provisions of section 25-G and 25-H of the Act.

9. On the other hand, the Learned ADA for respondent contended that the claim of the petitioner is highly belated and stale. He further contended that the services of the petitioner were never terminated by the respondent rather he himself had abandoned his job without intimation to the respondent department and even he had not completed 240 days in any calendar year. He also contended that no junior to the petitioner had been retained and no fresh hands had been engaged by the respondent, hence, he is not entitled to any relief.

10. To prove issue No.1, the petitioner stepped into the witness box as PW-1 to depose that he was engaged as beldar in the year, 1985 and worked till the year, 1987. He further deposed that he had completed 240 days in each calendar year and his services were orally terminated in the year, 1987 without issuance of any notice and payment of any compensation. He also deposed that the respondent had kept fresh persons after his termination. In cross-examination, he denied that he had left the job at his own in the year, 1986. He further denied that he had not completed 240 days in any calendar year. He also denied that he had worked only for 150 days in the year, 1985 and 140 days in the year, 1986. He denied that his services were never terminated by the respondent. He admitted that he had raised the industrial dispute after a period of 27 years. He denied that the juniors have not been retained.

11. On the other hand, the respondent has examined Shri Krishan Gopal, Superintendent as RW-1, who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the

averments as made in the reply. He also tendered in evidence authority letter Ex. RW-1/B and mandays chart Ex. RW-1/C. In cross-examination, he admitted that no notice was issued to the petitioner for resumption of his duties. He further admitted that no notice was issued and no compensation was paid to the petitioner at the time of his termination. He also admitted that Deep Ram, Joginder, Jagdish were engaged as fresh hands after the year, 1987. He denied that the petitioner had completed 240 days in every calendar year.

12. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner was engaged as daily wager by the respondent on 1.8.1985 and he worked as such till 31.7.1986 as is evident from the perusal of mandays chart Ex. RW-1/C. The perusal of mandays chart goes to show that the petitioner had worked for 150 days in the year 1985 and 140 days in the year, 1986. Therefore, from the mandays chart Ex. RW-1/C, it is clear that the petitioner had not completed 240 days in preceding twelve calendar months.

13. Now, the question which arises for consideration before this Court is as to whether the reference is stale and highly belated. The Learned Counsel for the petitioner contended that under the Industrial Disputes, no limitation is prescribed and the provision of Article 137 of the Limitation Act 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay.

14. Undisputedly, the petitioner had raised his industrial dispute after a period of more than 27 years. According to the petitioner he was terminated in the year, 1987. It is also clear from the reference itself that the petitioner had raised the industrial dispute after more than 27 years. Therefore, the position of law in respect of a stale claim is required to be seen.

15. In **(2013) 14 SCC 543, titled as Assistant Engineer Rajasthan State Agriculture Marketing Board, Sub Division Kota** *Vs.* **Mohan Lal,** it has been held by the Hon'ble Apex Court that though the Limitation Act is not applicable to the reference made under the ID Act but delay in raising industrial Dispute is an important circumstance for exercise of judicial discretion in determining relief that is to be granted. The relevant portion of aforesaid judgment is reproduced as under:—

> "19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

16. In **Assistant Executive Engineer, Karnataka** *Vs.* **Shivalinga reported in (2002) 10 SCC 167,** the services of the employee were terminated on 25.5.1985 and he approached the Labour Officer on 17.3.1995 and then the reference was made by the Government to the Labour Court. There was a delay of more than nine years in approaching the Labour Officer. In para 6 of the aforesaid judgment, the Hon'ble Apex Court has held as under:—

> "Learned Counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned Counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan

Kumar Pandit *vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the Learned Counsel have no application to the case on hand."

Thus, it has been held that in case there is a serious dispute or doubt in such relationship and the records of the employer become relevant, the long delay would come in the way of maintenance of the same.

In **Haryana State Coop. Land Development Bank Vs. Neelam reported in (2005) 5 SCC 91,** the employee was discontinued from service *w.e.f.* 30.5.1986 and he raised the demand notice on 30.9.1993 and thereafter the reference was sent to the Labour court by the appropriate government. The Labour Court passed an order answering the reference against the employee holding that the claim was belated. Thereafter, a writ petition was filed before the Hon'ble High Court which was allowed and the employee was directed to be reinstated in service with continuity of service but without back-wages. The Hon'ble Supreme Court set aside the judgment of the High Court and restored the judgment of the Labour Court as a result the reference stood answered against the workman. The relevant portion of the aforesaid judgment is reproduced as under:—

13. "In Ajaib Singh (*supra*), the management did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. In that case, the Labour Court granted the relief, but the same was denied to the workman only by the High Court. The Court referred to the purport and object of enacting Industrial Disputes Act only with a view to find out as to whether the provisions of the Article 137 of the Schedule appended to the Limitation Act, 1963 are applicable or not. Although, the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in Ajaib Singh (*supra*), but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the appropriate Government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court."

14. **"The decision of Ajaib Singh (*supra*) must be held to have been rendered in the fact situation obtaining therein and no ratio of universal application can be culled out therefrom. A decision, as is well-known, is an authority of what it decides and not what can logically be deduced therefrom** Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate, JT 2005 (1) SC 303], and Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav & Anr. para 42."

15" In Balbir Singh vs. Punjab Roadways and Another [(2001) 1 SCC 133], as regard Ajaib Singh (*supra*), this Court observed :—

5. "The Learned Counsel for the petitioner strenuously urged that the Tribunal committed error in denying relief to the workman merely on the ground of delay. The

Learned Counsel submitted that in industrial dispute delay should not be taken as a ground for denying relief to the workman if the order/orders under challenge are found to be unsustainable in law. He placed reliance on the decision of this Court in the case of Ajaib Singh *vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. [(1999) 6 SCC 82 : 1999 SCC (L&S) 1054 : JT (1999) 3 SC 38].

6. "We have carefully considered the contentions raised by the Learned Counsel for the petitioner. We have also perused the aforementioned decision. We do not find that any general principle as contended by the Learned Counsel for the petitioner has been laid down in that decision. The decision was rendered on the facts and circumstances of the case, particularly the fact that the plea of delay was not taken by the management in the proceeding before the Tribunal. In the case on hand the plea of delay was raised and was accepted by the Tribunal. Therefore, the decision cited is of little help in the present case. Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially."

16. "Yet again in Assistant Executive Engineer, Karnataka vs. Shivalinga [(2002) 10 SCC 167], a Bench of this Court observed :—

"6. Learned Counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned Counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases **where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale.** That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the Learned Counsel have no application to the case on hand."

17. "In Nedungadi Bank Ltd. (*supra*), a Bench of this Court, where S. Saghir Ahmad was a member [His Lordship was also a member in Ajaib Singh (*supra*), opined :—

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. **As to when a dispute can be said to be stale would depend on the facts and circumstances of each case.** When the matter has become final, it appears to us to be rather incongruous that the

reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made."

(Emphasis supplied).

17. In **(2006) 5 SCC 433 in case titled as UP State Road Transport Corporation *Vs.* Babu Ram,** the termination was dated 19.9.1983 and the reference was made on 29.8.1998. The Labour Court has held the termination as un-valid without considering the question of delay. The Hon'ble High Court dismissed the writ petition. The Hon'ble Supreme Court has held that no material was placed on record to show that the dispute was raised within reasonable time and the employee was not responsible for delay. The relevant portion of the aforesaid judgment is reproduced as under:—

"10. It is to be noted that the High Court has very cryptically disposed of the writ petition. The workman has not placed any material to show that it had raised dispute within a reasonable time, and/or that he was not responsible for delayed decision if any in the conciliation proceedings. It was for him to show that the dispute was raised within a reasonable time and that he was not responsible for any delay. The High Court, on a hypothetical basis has assumed that the dispute might have been raised promptly but delayed by the State Government and he cannot be penalized for delay in finalizing the conciliation proceedings and the reference. But neither the Labour Court nor the High Court has even noted the factual position. The conclusion was based on surmises and conjectures."

18. In **Assistant Engineer, CAD Kota Vs. Dhan Kunwar reported in (2006) 5 SCC 481,** the delay was of about eight years in raising the dispute. The Labour Court granted reinstatement with 30 % back-wages. The writ petition and writ appeal filed by the employer were dismissed. However, the Hon'ble Apex Court set aside the judgments of Hon'ble High Court and the Labour Court and held that no relief should have been granted. The relevant portion of the aforesaid judgment is reproduced herein under:—

"9. In the background of what has been stated above, the Labour Court should not have granted relief. Unfortunately, Learned Single Judge and the Division Bench did not consider the issues in their proper perspective and arrived at abrupt conclusions without even indicating justifiable reasons……..

19. In **UP State Road Transport Corporation Vs. Ram Singh and another (2008) 17 SCC 627,** the termination was dated 15.3.1973 and the reference was dated 15.6.1986 and there was a delay of about 13 years in making the reference. The reference was dismissed on the ground of delay. The relevant portion of the aforesaid judgment reads as under:—

" 7. We are of the view that in the facts and circumstances of the case, the High Court erred in not setting aside the award of the Labour Court. Apart from the unacceptable manner in which the appellant was denied the opportunity of participating in the proceedings, including being debarred from cross-examining the respondent, the Labour Court could not have entertained the industrial dispute given the enormous delay. This Court has in several decisions has held that while delay cannot by itself be sufficient reason to reject an industrial dispute, never the less the delay cannot be unreasonable. The decision in Prakash Chander Sahu has reaffirmed this principal. The reason for diligence and promptness lies in the fact that the records pertaining to an employee might have been destroyed and it would be difficult to obtain witnesses who would be competent to give evidence so many years

later if the Labour Court wishes to hold a further enquiry into the matter. In the present case, the delay of 13 years is unreasonable. The mere fact that the respondent was making repeated representations would not justify his raising the issue before the Labour Court after 13 years. In any event, the last representation was made in 1983 and the industrial dispute was admittedly raised in 1986. The lack of diligence on the part of the respondent is apparent. "

20. In **(2009) 13 SCC 746, State of Karnataka** *Vs.* **Ravi Kumar** the Hon'ble Supreme Court dismissed the reference on the ground of delay and it was held that the person supervising could not be expected to prove after 14 years that the employee did not work or that he did not work for 240 days or he voluntarily left the job. The relevant portion of the aforesaid judgment reads as under:—

"9. It is not possible to expect the Asstt. Executive Engineer to prove after 14 years that the daily wager did not work or that he did not work for 240 days in a year or that the daily wager voluntarily left the work……

21. In a recent judgment of our **Hon'ble High Court delivered in CWP No. 1912 of 2016 titled as Bego Devi** *Versus* **State of HP and others decided on 26.10.2016,** it has been held as under:—

"9. It is beaten law of land that delay takes away the settings of law. A person who does not seek relief within time, his petition has to be dismissed only on the grounds of delay and laches, otherwise, it would amount to gross misuse of jurisdiction and disturb the settled position".

22. In view of the aforesaid law laid down by the Hon'ble Apex Court, it is clear that though the Court cannot import the period of limitation and the reference cannot be dismissed merely on the ground of delay, it does not mean that irrespective of the facts and circumstances of the case, a stale claim must be entertained and the relief should be granted. In the case of delay, no formula of universal application can be laid down and it would depend on the facts and circumstances of each case. The delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. The onus of showing that the dispute was raised within a reasonable time is upon the workman and it is for the workman to explain the delay by furnishing the acceptable explanation to the satisfaction of the Court that he was not responsible for the delay caused. The fact that the workman was making repeated representations/requests is not sufficient to explain the delay.

23. Keeping in view the aforesaid principles laid down by the Hon'ble Apex Court, the facts of this case are required to be seen. The services of the petitioner were stated to be terminated *w.e.f.* the year, 1987 and he raised the present dispute after a period of more than 27 years. In his claim petition, the petitioner has stated that after his termination he was assured by the respondent that he would be re-engaged after some time and even he had made various requests to the respondent but nothing has been heard by the respondent. However, there is no evidence on record to suggest as to when the respondent had given him assurance and even he has failed to depose in this respect and also failed to place on record such request/representation filed by him before the respondent for his re-engagement. The burden of proof was upon the petitioner to show that the dispute was raised within a reasonable time and to offer an explanation to the satisfaction of this Court for the delay of 27 years caused in seeking reference but the petitioner has failed to discharge his burden. The reference is therefore stale and is liable to be rejected on the ground of delay in raising the dispute.

24. On merits, from the perusal of mandays chart Ex. RW-1/C and evidence led by the parties, the petitioner has failed to prove on record that he had worked for 240 days in preceding

twelve months prior to his termination. In **2009 (120) FLR 1007 incase titled as Relip Nagarpalika *Vs*. Babuji Gabhaji Thakore and others,** the Hon'ble Supreme Court has held as under:—

> **"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."**

In **AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat *V/s* Dayabhai Amar Singh,** the Hon'ble Supreme Court has held that:—

> **"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."**

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. The petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination. There is no *iota* of evidence which could go to show that the petitioner had completed 240 working days in any calendar year and in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

26. The Learned Counsel for the petitioner next contended that the respondent had taken the plea of abandonment in its reply but had totally failed to establish such plea by producing any evidence on record. As pointed out earlier, the Hon'ble Supreme Court has held that the delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. It has also been held by the **Hon'ble Supreme Court in 2009 (13) SCC 746** that the person supervising cannot be expected to prove after long delay that the employee/workman did not work for 240 days in a year or that he voluntarily left the job. It is difficult for the employer to obtain witness/es who would be competent to give evidence so many years later. It has further been held that lapse of time results in losing the remedy and the right as well and the delay in seeking the reference causes prejudice to both the employer and employee. In the present case also it would not be expected from the respondents to lead evidence and to bring witnesses or to place documents on record to prove after 27 years that the petitioner had abandoned the job at his own. The petitioner had raised the industrial dispute after lapse of about 27 years and remained silent during this period without any plausible explanation, and as such, no relief can be granted to him after a lapse of about 27 years as the delay in the present case is certainly fatal.

27. The Learned Counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondent had retained his juniors and engaged fresh hands who are still working as such the respondent had violated the principles of "last come first go". However, no documentary evidence has been placed on record by the petitioner in this respect. Though, RW-1 admitted in cross-examiantion that Deep Ram, Joginder and Jagdish were engaged as fresh hands after the year, 1987, however, as observed earlier, since the petitioner had raised the

demand notice after a period of 27 years as such there is no question of consideration of equal treatment with his juniors/fresh hands who had allegedly been retained/engaged. To take this view, I am fortified with the judgment of our own **Hon'ble High Court in CWP No. 4515/2012 decided on 13.6.2012, titled as Suraj Mani** *Vs.* **HPSEB** wherein it has been held that the petitioners cannot claim equal treatment after about two decades with the juniors who have allegedly been retained. The petitioner who slept for a long period of 27 years is not entitled to claim any relief on the ground of equal treatment. Since, the reference has been proved to be stale and belated as such the protection of sections 25-G and 25-H of the Act cannot be granted to the petitioner. If the alleged termination of petitioner was either illegal or unjustified, he would not have kept silent for a period of 27 years.

28. Thus, keeping in view the above cited rulings and the material fact that the petitioner had raised the industrial dispute after lapse of about 27 years and remained silent during this period without any plausible explanation as such no relief can be granted to him. Hence, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Consequently, both these issues are answered against the petitioner.

Issue No. 2:

29. Since, the petitioner has failed to prove issue No.1, above, this issue becomes redundant. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief:

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 26th Day of June, 2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SHRI SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Ref. No. 106 of 2016
Instituted on 2-11-2016
Decided on 4-6-2018

Shishi Ram s/o Shri Lachmi Nand, r/o Village Ching, P.O. Anti, Tehsil Jubbal, District Shimla, H.P. ..*Petitioner.*

VS.

The Executive Engineer, Division Rohru, Tehsil Rohru, District Shimla, H.P. ..*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri R.K. Khidtta, Advocate
For respondent: Shri Rajinder, Advocate Vice Csl.

AWARD

The reference for adjudication, sent by the appropriate government, is as under:—

"Whether alleged termination of services of Sh. Shishi Ram s/o Shri Lachmi Nand, r/o Village Ching, P.O. Anti, Tehsil Jubbal, District Shimla, H.P. during May, 1995 by the Executive Engineer, HPSEB Ltd., Division Rohru, District Shimla, H.P. who had worked as beldar on daily wages only for 221 days during 1994-95 and has raised his industrial dispute after about 20 years, allegedly without complying with the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the working period of 221 days during 1994-95 and delay of about 20 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

2. Briefly, the case of the petitioner is that he was engaged as beldar by the respondent in the month of September, 1994 and worked as such till March 1997 continuously and his services had been terminated without serving any notice and without payment of retrenchment compensation and without following the mandatory provisions of Industrial Disputes Act, 1947 (hereinafter referred to as Act) as well as the Standing Orders of the HPSEB and after his termination, he visited the office of respondent number of times for his re-engagement as the work was available with the board and even the junior persons to him namely Amrit Singh, Vipin, Geeta Ram and Smt. Sushila Kamta are working with the respondent but despite assurance given by the officials of the respondent, he was not called back in the job and due to the assurance given by the officials of the respondent the petitioner remained under impression that he would be called back in the job and could not file the demand notice earlier. That the petitioner was forced to file demand notice against his illegal termination but due to the adamant attitude of the respondent the conciliation proceedings failed. That the petitioner had worked with the board *w.e.f.* March, 1995 to March, 1997 and had completed 240 days in each calendar year and the services of his juniors namely Sushila Kamta have been regularized whereas his services have been terminated by the respondent without following the mandatory provisions of sections 25-F, 25-G and 25-H of the Act. Against this backdrop a prayer has been made that the termination order of the petitioner passed by the respondent be quashed and set aside and the respondent be directed to reinstate the petitioner in service on the same post *w.e.f.* 1.6.1995 with all the consequential service benefits including back-wages.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken that the claim petition is not maintainable on account of non-joinder and mis-joinder of necessary party, that the claim petition is hopelessly time barred, that the petitioner has not approached this Court with clean hands and estoppel. On merits, it has been asserted that the petitioner was engaged on 26.9.1994 and worked as such with the respondent upto 25.5.1995 and he had never completed 240 days in each calendar year and his services were never terminated by the respondent who had left the job at his own sweet will and never turned up for work after 25.5.1995 and since he had not completed 240 days in each calendar year, hence, the petitioner is not entitled for any prior notice as required under the Act. It is further asserted that the petitioner had worked with the respondent for 226 days. It is denied that the petitioner was assured for re-engagement by the respondent board. It is asserted that no person junior to the petitioner has been retained or regularized except those who have approached the Labour Court as well as other Courts. It is further asserted that the petitioner has raised the present dispute after a gap of 22 years. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent.

5. On the pleadings of the parties, the following issues were framed on 28.4.2017.

(1) Whether the termination of the services of petitioner during May, 1995 by the respondent without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? ..*OPP.*

(2) If issue No.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? ..*OPP.*

(3) Whether the claim petition is time barred as alleged? ..*OPR.*

(4) Whether the claim petition is not maintainable as alleged? ..*OPR.*

(5) Relief.

6. I have heard the Learned Counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1 : No
Issue No. 2 : Becomes redundant
Issue No. 3 : Yes
Issue No. 4 : No
Relief.: Reference answered in favour of the respondent and against the petitioner per operative part of award.

REASONS FOR FINDINGS.

Issues No. 1 & 3:

8. Being interlinked and correlated, all these issues are taken up together for decision.

9. The Learned Counsel for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without serving him any notice as required under section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that the junior persons to the petitioner are still working with the respondent department and fresh workers have been engaged in violation of the provisions of section 25-G and 25-H of the Act.

10. On the other hand, Learned Vice Csl. Counsel for the respondent contended that the claim of the petitioner is highly belated and stale. He further contended that the services of the petitioner had never been terminated by the respondent who had left the job at his own and even he had not completed 240 days in any calendar year. He also contended that no junior to the petitioner had been retained and no fresh hands had been engaged by the respondent, hence, he is not entitled to any relief.

11. To prove issue No.1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the

claim petition. He also tendered in evidence demand notice dated 11.3.2015 Ex. PW-1/B. In cross-examination, he admitted that he was engaged on muster roll basis on 26.9.1994 as beldar. He denied that he had worked till 25.5.1995. He admitted that he was engaged for a specific work. He denied that he had worked for 221 days in total. He further denied that he had not completed 240 days in any calendar year. He also denied that he had left the job at his own. He admitted that he raised the demand notice on 11.3.2015. He denied that no junior was retained by the board and no fresh hands were engaged.

12. PW-2 Ms. Sushila Kamta, Sub Station Attendant, Shimla deposed that she was engaged by the board as beldar on 20.7.1998 at Sub Division Rohru and she is still working with the board. In cross-examination, she denied that she was appointed in Electric Division Rampur on 26.7.1998.

13. Shri Hira Lal Junior Engineer stepped into the witness box as PW-3 to depose that as per record Smt. Sushila Kamta was initially appointed as beldar in Electric Sub Division Rohru on 20.7.1998 and at present she is still working with the board. He also tendered in evidence the copy of information supplied under RTI Act to Shri Amrit Singh *vide* letter dated 30.11.2012 Ex. PW-3/A. In cross-examination he admitted that Rohru and Nogli are separate Sub Divisions.

14. PW-4 Shri Ajay Kumar Assistant Engineer, HPSEB Rohru deposed that as per the record Shri Amrit Singh was engaged as beldar at Electrical Sub Division Rohru on 30.1.1995 on daily wages, Puran Chand was engaged on 26.10.1992, Surinder Singh was engaged as beldar on 26.10.1986, Panna Lal was engaged as beldar on 26.10.1992, Goverdhan Singh was engaged as beldar on 26.11.1992 and petitioner was engaged as beldar on daily wages on 26.9.1994. In cross examination, he admitted that the petitioner had not completed 240 days in any calendar year as per record brought by him. He stated that the petitioner had worked till 25.5.1995 for 221 days and no junior to him was retained except on the orders of the Court. He admitted that the petitioner had raised the demand notice after 20 years.

15. PW-5 Shri Prem Chand Sharma, Senior Assistant has stated that as per the record Shri Shayama Nand and Shishi Ram have filed OA No. 779/1997 Mark PX before the Administrative Tribunal Shimla and the department had filed the reply Mark P-1 to the same and the OA was decided *vide* order dated 20.10.2004 Mark PY. PW-6 Shri Ram Kumar, Senior Assistant H.P. Administrative Tribunal, Shimla has stated that the petitioner had filed an OA No. 779/1997 before the H.P. State Administrative Tribunal which was decided *vide* order dated 20.10.2004 Ex. PW-6/A. He further deposed that the petition filed by the petitioner alongwith Shyama Nand is Ex. PW-6/B and the copy of reply filed by the respondent to the OA is Ex. PW-6/C.

16. The respondent has examined one Shri Sanjeev Rawat, Senior Executive Engineer as RW-1, who deposed that the petitioner was engaged on 26.9.1994 as daily wages beldar on muster roll basis and he worked as such till 25.5.1995 for 221 days and he had never completed 240 days in any calendar year. He further deposed that the board had retained junior person to the petitioner namely Amrit Singh upon the orders of the Court and the petitioner had raised the demand notice after 22 years. In cross-examination, he admitted that Sushila Kamta was engaged on 20.7.1998 at Sub Division Rohru. He further admitted that Amrit Singh was engaged on the basis of the award dated 3.1.2015 passed by this Court. He denied that the persons namely Vipin and Geeta Ram are juniors to the petitioner and they are still working. He further denied that the petitioner had completed 240 days in a calendar year. He also denied that the services of the petitioner were illegally terminated. He denied that there is no delay of 22 years in raising the demand notice.

17. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked only for 221 days as daily waged beldar

with the respondent. Now, the question which arises for consideration before this Court is as to whether the reference is stale and highly belated. The Learned Counsel for the petitioner contended that under the Industrial Disputes, no limitation is prescribed and the provision of Article 137 of the Limitation Act 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. He further contended that the petitioner was earlier pursuing his remedy before the H.P. State Administrative Tribunal by filing an original application No. 779 of 1997 which was later on withdrawn by him on 21.10.2004 for want of jurisdiction and thereafter he raised the present industrial dispute.

18. As per the reference the petitioner was terminated during May, 1995 whereas the demand notice was raised by the petitioner on 11.3.2015 which fact has also admitted by him in cross-examination. Therefore, the position of law in respect of a stale claim is required to be seen. In **(2013) 14 SCC 543, titled as Assistant Engineer Rajasthan State Agriculture Marketing Board, Sub Division Kota** *Vs.* **Mohan Lal,** it has been held by the Hon'ble Apex Court that though the Limitation Act is not applicable to the reference made under the ID Act but delay in raising industrial Dispute is an important circumstance for exercise of judicial discretion in determining relief that is to be granted. The relevant portion of aforesaid judgment is reproduced as under:—

> "19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

19. In **Assistant Executive Engineer, Karnataka** *Vs.* **Shivalinga reported in (2002) 10 SCC 167,** the services of the employee were terminated on 25.5.1985 and he approached the Labour Officer on 17.3.1995 and then the reference was made by the Government to the Labour Court. There was a delay of more than nine years in approaching the Labour Officer. In para 6 of the aforesaid judgment, the Hon'ble Apex Court has held as under:—

> "Learned Counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned Counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit vs. U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the Learned Counsel have no application to the case on hand."

Thus, it has been held that in case there is a serious dispute or doubt in such relationship and the records of the employer become relevant, the long delay would come in the way of maintenance of the same.

20. In **Haryana State Coop. Land Development Bank** *Vs.* **Neelam reported in (2005) 5 SCC 91,** the employee was discontinued from service *w.e.f.* 30.5.1986 and he raised the demand notice on 30.9.1993 and thereafter the reference was sent to the Labour court by the appropriate government. The Labour Court passed an order answering the reference against the employee holding that the claim was belated. Thereafter, a writ petition was filed before the Hon'ble High Court which was allowed and the employee was directed to be reinstated in service with continuity of service but without back-wages. The Hon'ble Supreme Court set aside the judgment of the High Court and restored the judgment of the Labour Court as a result the reference stood answered against the workman. The relevant portion of the aforesaid judgment is reproduced as under:—

13. "In Ajaib Singh (*supra*), the management did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. In that case, the Labour Court granted the relief, but the same was denied to the workman only by the High Court. The Court referred to the purport and object of enacting Industrial Disputes Act only with a view to find out as to whether the provisions of the Article 137 of the Schedule appended to the Limitation Act, 1963 are applicable or not. Although, the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in Ajaib Singh (*supra*), but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the appropriate Government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court."

14. **"The decision of Ajaib Singh (*supra*) must be held to have been rendered in the fact situation obtaining therein and no ratio of universal application can be culled out therefrom. A decision, as is well-known, is an authority of what it decides and not what can logically be deduced therefrom** Bharat Forge Co. Ltd. *Vs.* Uttam Manohar Nakate, JT 2005(1) SC 303], and Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav & Anr. para 42."

15. In Balbir Singh vs. Punjab Roadways and Another [(2001) 1 SCC 133], as regard Ajaib Singh (*supra*), this Court observed :—

5. "The Learned Counsel for the petitioner strenuously urged that the Tribunal committed error in denying relief to the workman merely on the ground of delay. The Learned Counsel submitted that in industrial dispute delay should not be taken as a ground for denying relief to the workman if the order/orders under challenge are found to be unsustainable in law. He placed reliance on the decision of this Court in the case of Ajaib Singh *v.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. [(1999) 6 SCC 82 : 1999 SCC (L&S) 1054 : JT (1999) 3 SC 38].

6. "We have carefully considered the contentions raised by the Learned Counsel for the petitioner. We have also perused the aforementioned decision. We do not find that any general principle as contended by the Learned Counsel for the petitioner has been laid down in that decision. The decision was rendered on the facts and circumstances of the case, particularly the fact that the plea of delay was not taken by the management in the proceeding before the Tribunal. In the case on hand the plea of delay was raised and was

accepted by the Tribunal. Therefore, the decision cited is of little help in the present case. Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially."

16. "Yet again in Assistant Executive Engineer, Karnataka vs. Shivalinga [(2002) 10 SCC 167], a Bench of this Court observed :—

"6. Learned Counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned Counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit vs. U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In **such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale.** That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

17. "In Nedungadi Bank Ltd. (*supra*), a Bench of this Court, where S. Saghir Ahmad was a member [His Lordship was also a member in Ajaib Singh (*supra*) , opined :—

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. **As to when a dispute can be said to be stale would depend on the facts and circumstances of each case.** When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made."

(Emphasis supplied).

21. In **(2006) 5 SCC 433 in case titled as UP State Road Transport Corporation *Vs.* Babu Ram,** the termination was dated 19.9.1983 and the reference was made on 29.8.1998. The Labour Court has held the termination as un-valid without considering the question of delay. The Hon'ble High Court dismissed the writ petition. The Hon'ble Supreme Court has held that no material was placed on record to show that the dispute was raised within reasonable time and the employee was not responsible for delay. The relevant portion of the aforesaid judgment is reproduced as under:—

"10. It is to be noted that the High Court has very cryptically disposed of the writ petition. The workman has not placed any material to show that it had raised dispute within a reasonable time, and/or that he was not responsible for delayed decision if any in the conciliation proceedings. It was for him to show that the dispute was raised within a reasonable time and that he was not responsible for any delay. The High Court, on a hypothetical basis has assumed that the dispute might have been raised promptly but delayed by the State Government and he cannot be penalized for delay in finalizing the conciliation proceedings and the reference. But neither the Labour Court nor the High Court has even noted the factual position. The conclusion was based on surmises and conjectures."

22. In **Assistant Engineer, CAD Kota Vs. Dhan Kunwar reported in (2006) 5 SCC 481,** the delay was of about eight years in raising the dispute. The Labour Court granted reinstatement with 30 % back-wages. The writ petition and writ appeal filed by the employer were dismissed. However, the Hon'ble Apex Court set aside the judgments of Hon'ble High Court and the Labour Court and held that no relief should have been granted. The relevant portion of the aforesaid judgment is reproduced herein under:—

"9. In the background of what has been stated above, the Labour Court should not have granted relief. Unfortunately, Learned Single Judge and the Division Bench did not consider the issues in their proper perspective and arrived at abrupt conclusions without even indicating justifiable reasons……..

23. In **UP State Road Transport Corporation *Vs.* Ram Singh and another (2008) 17 SCC 627,** the termination was dated 15.3.1973 and the reference was dated 15.6.1986 and there was a delay of about 13 years in making the reference. The reference was dismissed on the ground of delay. The relevant portion of the aforesaid judgment reads as under:—

" 7. We are of the view that in the facts and circumstances of the case, the High Court erred in not setting aside the award of the Labour Court. Apart from the unacceptable manner in which the appellant was denied the opportunity of participating in the proceedings, including being debarred from cross-examining the respondent, the Labour Court could not have entertained the industrial dispute given the enormous delay. This Court has in several decisions has held that while delay cannot by itself be sufficient reason to reject an industrial dispute, never the less the delay cannot be unreasonable. The decision in Prakash Chander Sahu has reaffirmed this principal. The reason for diligence and promptness lies in the fact that the records pertaining to an employee might have been destroyed and it would be difficult to obtain witnesses who would be competent to give evidence so many years later if the Labour Court wishes to hold a further enquiry into the matter. In the present case, the delay of 13 years is unreasonable. The mere fact that the respondent was making repeated representations would not justify his raising the issue before the Labour Court after 13 years. In any event, the last representation was made in 1983 and the industrial dispute was admittedly raised in 1986. The lack of diligence on the part of the respondent is apparent. "

24. In (**2009) 13 SCC 746, State of Karnataka** *Vs.* **Ravi Kumar the Hon'ble Supreme Court** dismissed the reference on the ground of delay and it was held that the person supervising could not be expected to prove after 14 years that the employee did not work or that he did not work for 240 days or he voluntarily left the job. The relevant portion of the aforesaid judgment reads as under:—

"9. It is not possible to expect the Asstt. Executive Engineer to prove after 14 years that the daily wager did not work or that he did not work for 240 days in a year or that the daily wager voluntarily left the work……

25. In a recent judgment of our **Hon'ble High Court delivered in CWP No. 1912 of 2016 titled as Bego Devi** *Versus* **State of HP and others decided on 26.10.2016,** it has been held as under:—

> **"9. It is beaten law of land that delay takes away the settings of law. A person who does not seek relief within time, his petition has to be dismissed only on the grounds of delay and laches, otherwise, it would amount to gross misuse of jurisdiction and disturb the settled position".**

26. In view of the aforesaid law laid down by the Hon'ble Apex Court, it is clear that though the Court cannot import the period of limitation and the reference cannot be dismissed merely on the ground of delay, it does not mean that irrespective of the facts and circumstances of the case, a stale claim must be entertained and the relief should be granted. In the case of delay, no formula of universal application can be laid down and it would depend on the facts and circumstances of each case. The delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. The onus of showing that the dispute was raised within a reasonable time is upon the workman and it is for the workman to explain the delay by furnishing the acceptable explanation to the satisfaction of the Court that he was not responsible for the delay caused. The fact that the workman was making repeated representations/requests is not sufficient to explain the delay.

27. Keeping in view the aforesaid principles laid down by the Hon'ble Apex Court, the facts of this case are required to be seen. The services of the petitioner were stated to be terminated during May, 1995. The perusal of the record reveals that the petitioner had filed original application No. 779 of 1997 before the HP State Administrative Tribunal which was later on withdrawn by him for want of jurisdiction *vide* order dated 21.10.2004 Ex. PW-6/A. Admittedly, the demand notice was raised by the petitioner on 11.3.2015 *i.e.* after a period of about 11 years when the OA was withdrawn by him before the HP State Administrative Tribunal. However, no explanation has been furnished by the petitioner for not raising the demand notice within a reasonable period. The burden of proof was upon the petitioner to show that the dispute was raised within a reasonable time and to offer an explanation to the satisfaction of this Court for the delay of 11 years caused in seeking reference but the petitioner has failed to discharge his burden. The reference is therefore stale and is liable to be rejected on the ground of delay in raising the dispute.

28. On merits, from the perusal of evidence led by the parties, the petitioner has failed to prove on record that he had worked for 240 days in preceding twelve months prior to his termination. In **2009 (120) FLR 1007 incase titled as Relip Nagarpalika *Vs.* Babuji Gabhaji Thakore and others,** the Hon'ble Supreme Court has held as under:—

> **"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."**

In **AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat** *V/s* **Dayabhai Amar Singh,** the Hon'ble Supreme Court has held that:—

> **"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that**

he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."

A bare perusal of the extract of the judgments re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. The perusal of mandays chart annexure R-1 shows that the petitioner had worked for a period of 221 days *w.e.f.* 26.9.1994 to 25.5.1995. No evidence to the contrary has been led by the petitioner to show that he had completed 240 days in any calendar year and in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

29. The Learned Counsel for the petitioner next contended that the respondent has taken the plea of abandonment in its reply but had totally failed to establish such plea by producing any evidence on record. As pointed out earlier, the Hon'ble Supreme Court has held that the delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. It has also been held by the **Hon'ble Supreme Court in 2009 (13) SCC 746** that the person supervising cannot be expected to prove after long delay that the employee/workman did not work for 240 days in a year or that he voluntarily left the job. It is difficult for the employer to obtain witness/es who would be competent to give evidence so many years later. It has furthe been held that lapse of time results in losing the remedy and the right as well and the delay in seeking the reference causes prejudice to both the employer and employee. In the present case also it would not be expected from the respondents to lead evidence and to bring witnesses or to place documents on record to prove after 11 years that the petitioner had abandoned the job at his own. The petitioner had raised the industrial dispute after lapse of about 11 years and remained silent during this period without any plausible explanation, and as such, no relief can be granted to him after a lapse of about 11 years as the delay in the present case is certainly fatal.

30. The Learned Counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondent had retained his juniors and had engaged fresh hands who are still working as such the respondent has violated the principles of "last come first go". In his evidence by way of affidavit Ex. PW-1/A, the petitioner stated that his juniors namely Amrit Singh, Sushila Kamta, Vipin and Geeta Ram are still working with the respondent and the services of Smt. Sushila Kamta have been regularized. However, except for the statement of the petitioner, no evidence has been led by the petitioner to show that Vipin and Geeta Ram were juniors to the petitioner and they have been retained in service by the respondent. In cross-examination, RW-1 specifically denied that Vipin and Geeta Ram are juniors to the petitioner and they are still working. Furthermore, the cross-examination of RW-1 reveals that the services of Amrit Singh were re-engaged on the basis of the award dated 3.1.2015 passed by this Court and therefore it is clear that he had not been engaged by the respondent board itself. So far as the engagement of services of Smt. Sushila Kamta is concerned, she was engaged as beldar on 20.7.1998 at Sub Division Rohru as per her oral statement while she appeared before this Court as PW-2. Moreover, the perusal of Ex. PW-3/A shows that Smt. Sushila Kamta was initially engaged on 20.7.1998 at Sub Station, Samoli under Electrical Sub Division Rohru as beldar and she was transferred as T-mate on 30.1.2010 to the office of City Electric Division, HSEBL Shimla from Sub Division Nogli. However, no documentary evidence has been led by the petitioner in order to show that till what date Smt. Sushila Kamta had worked at Sub Division Rohru because as per the document Ex. PW-3/A itself she was transferred on T-mate/work charge from the office of Sub Division Nogli on 30.1.2010 and as per the statement of PW-2 herself at present she is working at City Electric Division Shimla. Therefore, in the absence of any documentary evidence on record it cannot be said that Smt. Sushila Kamta was retained as beldar by the respondent at Sub Division Rohru where

the petitioner had worked. Moreover, as observed earlier, the petitioner had raised the demand notice after a period of 11 years as such there is no question of consideration of equal treatment with the junior persons who have allegedly been retained/engaged. To take this view, I am fortified with the judgment of our own **Hon'ble High Court in CWP No. 4515/2012 decided on 13.6.2012, titled as Suraj Mani** *Vs.* **HPSEB** wherein it has been held that the petitioners cannot claim equal treatment after about two decades with the juniors who have allegedly been retained. The petitioner who slept for a long period of 11 years is not entitled to claim any relief on the ground of equal treatment. Since, the reference has been proved to be stale and belated as such the protection of sections 25-G and 25-H of the Act cannot be granted to the petitioner. If the alleged termination of petitioner was either illegal or unjustified, he would not have kept silent for a period of 11 years.

31. Thus, keeping in view the above cited rulings and the material fact that the petitioner had raised the industrial dispute after lapse of about 11 years and remained silent during this period without any plausible explanation as such no relief can be granted to him. Hence, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Consequently, both these issues are answered against the petitioner.

Issue No. 2:

32. Since, the petitioner has failed to prove issue No. 1, above, this issue becomes redundant.

Issue No. 4:

33. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief:

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 4th Day of June, 2018.

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

PUBLIC WORKS DEPARTMENT

NOTIFICATION

Shimla-171002, *the* 21*st November*, 2018

No. PBW(B)F(7)3/2009-II.—In continuation of this department's notification of even number dated 27th October, 2018, the Governor, Himachal Pradesh is pleased to declare the following mentioned roads as Major District Roads (MDRs):—

Sl. No.	Name of Road	District	Length (Kms)	MDR No's
91.	Prour-Kharoth-Gaggal Khas-Dheera-Tapa-Thaliyal-Purba road	Kangra	17.000	100
92.	Alampur-Dehru-Shakoh-Talwar-Kaluhi-Lambagaon Jaisinghpur-Dalu-Khalta-Harsipattan road.	Kangra	26.240	101

Accordingly the total length of Major District Roads in the State will be 4251.000 kms.

By order,
MANISHA NANDA,
Addl. Chief Secretary (PW).

PUBLIC WORKS DEPARTMENT

NOTIFICATION

Shimla-171002, *the* 22*nd November*, 2018

No. PBW(B&R) (B)F(7)-2/2018.—In continuation of this department's notification No. PBW(B)F(7)3/2009-II dated 21st November, 2018, the Governor, Himachal Pradesh is pleased to declare the 'Aara Chowk to Jaurbar' road in District Kangra having a length of 10.000 kms as Major District Road no. 102 at Sr. No. 93. Accordingly the total length of Major District Roads in the State will be 4261.000 kms.

By order,
MANISHA NANDA,
Addl. Chief Secretary (PW).

LAW DEPARTMENT

NOTIFICATION

Shimla-2, *the* 15*th November*, 2018

No. LLR-E(9)-1/2018.—In continuation of this Department’s notifications of even number dated 7th March, 2018, 14th March, 2018, 3rd July, 2018, 29th September, 2018 and 12 October, 2018, the Governor, Himachal Pradesh is pleased to order to appoint Sh. Neeraj Sharma, Advocate,

Punjab & Haryana High Court, Chandigarh, r/o P727/2008, House No. 652-653, Sector 8 B, Chandigarh (Mob. 9217-684169) as Penal Advocate to represent the State of Himachal Pradesh before NGT at New Delhi in Civil/Criminal cases with immediate effect.

2. This engagement is purely at the pleasure of the State Government and can be withdrawn at any stage without assigning any reason(s) thereof.

3. The other terms and conditions as contained in Notification of this Department dated 28th May, 2012 and 31st July, 2012 would continue to apply to the above empanelled Advocate.

4. All the Departments are requested that whenever they need the services of above Advocate pending before NGT, New Delhi, they may engage above Advocate with the prior approval of the Law Department and in consultation with the Advocate General, Himachal Pradesh.

By order,
Sd/-
LR-cum-*Pr. Secretary (Law).*

नाम परिवर्तन

मैं, रिंकू कटोच पुत्री श्री अच्छर सिंह कटोच, निवासी वीपीओ इंदौरा, तहसील इंदौरा, जिला कांगड़ा, हि0 प्र0 घोषित करती हूं कि मेरे पुत्र नामतः क्षितिज सिंह गुलेरिया एवं प्रीक्षित सिंह गुलेरिया के अकादमिक रिकार्ड में मेरा नाम रिंकू कटोच के नाम पर रिंकू गुलेरिया गलती से लिखा गया है, जबकि मेरा सही नाम रिंकू कटोच है। कृपया सभी संबंधित नोट करें।

रिंकू कटोच,
पुत्री श्री अच्छर सिंह कटोच,
निवासी वीपीओ इंदौरा, तहसील इंदौरा,
जिला कांगड़ा, हि0 प्र0।

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है